

Prosser Letter 11-05-2009 to PSC re Change of Control

Exhibit E

Holt Letter to PSC Counsel Boyd Sprehn February 24, 2006

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February 24, 2006

Boyd L. Sprehn, Esq.
Watts & Benham, P.C.
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Virgin Islands 00801-4720

Re: PSC Request for Update on Litigation

Dear Boyd:

I apologize for not getting back to you earlier. The following is Vitelco's description of the litigation you inquired about in the order of the attachment provided to me:

- 1. Rural Telephone Finance Cooperative ("RTFC") v. Innovative Communications Corp.**
04-CV-154-G
V.I. District Court (Originally filed in E.D. Va.) (STT)
Loan Default Action

The Court has dismissed 21 of the 31 counts asserted by the RTFC as alleged defaults of the RTFC/ICC loan agreement. The Court denied the remaining motions for summary judgment meaning a trial on the merits of the 10 remaining defaults will take place. It should be noted that in denying the RTFC's summary judgment motion, the court noted in a footnote that the RTFC may not even be able to prove the validity of a loan agreement. This finding is based on the fact that the RTFC acknowledged that it changed pages to the loan agreement after it was signed by ICC and it did not keep a copy of what ICC actually signed, so that the RTFC may not be able to prove the terms of the agreement actually signed by ICC. ICC also has a motion pending to file multiple counterclaims against the RTFC. Judge Barnard has entered a scheduling order regarding completion of discovery in preparation for trial.

2. **RTFC v. Prosser**
04-CV-155-G
V.I. District Court (STT)
Guarantee Action

This is an action against Prosser for guarantee of the ICC loans. As noted by the RTFC, it has been stayed.

3. **RTFC, et al, v. Prosser et al,.**
04-CV-132-G
V.I. District Court (STT)
Derivative Shareholder Action

This is an action against ICC and Vitelco, as well as their directors, for alleged conduct in violation of the directors' fiduciary duty. Both ICC and Vitelco, as well as the directors, have filed motions to dismiss that are pending. As noted by the RTFC, the parties are waiting for a new judge to be assigned to this case. There are substantial counterclaims filed by ICC and Vitelco pending in this case as well.

4. **ICC v. RTFC**
05-CV-115-G
V.I. District Court (STT)
Declaratory Judgment Action (re line of credit with RTFC)

This case involves declaratory relief by ICC as the RTFC asserts that a \$10 million dollar line of credit has not been paid, which ICC believes it has paid.

5. **RTFC v. ICC**
05-CA-1014
E.D. VA
Line of Credit Action (regarding the same line of credit above)

This case involves declaratory relief by the RTFC as the RTFC asserts that a \$10 million dollar line of credit has not been paid, which ICC believes it has paid. This case is identical to the prior case and will probably be consolidated with it.

6. **ICC v. RTFC, et al**
05-CV-168-G
V.I. District Court (STT)
Action for Wrongful Use of Civil Proceedings

This case involves ICC's claim against the RTFC and two of its officers for the filing of the 16 frivolous alleged defaults, which the District Court dismissed in Civil No. 2004-154. The defendants have moved to dismiss, which motion is pending.

7. **Virgin Islands Telephone Corporation v. RTFC, Greenlight et al**
05-CV-18-G
V.I. District Court (STT)
Action for TRO and Injunctive Relief

This case initially involved a complaint by Vitelco against the RTFC and Greenlight seeking to enjoin these entities from attempting to take control, either directly or indirectly, of Vitelco, without PSC approval. The complaint was amended on February 23rd to add the CFC, the entity which operates the RTFC, as a defendant and to expand the claims against the defendants to seek damages based on a tort of outrage, civil conspiracy and liability under §876(b) of the *Restatement (Second) of Torts*. The Court's TRO opinion has been previously provided to you.

8. **RTFC v. ICC**
05-CV-19-G
V.I. District Court (STT)
Transferred from Virginia

This is the same case as item 5 above, but is the civil no. now being used by the District Court after having the file transferred from Virginia.

9. **RTFC v. Virgin Islands Telephone Company**
05-CV-320 (JCC)
E.D. VA
Action for Breach of Contract

This was an action involving Vitelco's \$4 million line of credit with the RTFC, which has been settled and dismissed.

10. **In re Emerging Communications, Inc. Shareholder Litigation**

Consolidated Civil Action 16415 NC

Chancery Court, Delaware

Shareholder action against ICC, LLC; Emerging Communications, Inc. Innovative Communication Corporation and Jeffrey J. Prosser

This is the claim by the Greenlight plaintiffs which has been reduced to judgment against Emcom, ICC-LLC, Prosser and a dissolved company. The judgments have been previously provided to you. The defendants appealed to the Delaware Supreme Court and the defendants/appellants briefs have been filed. The bankruptcy petitions against certain of these entities have stayed those portions of the appeal, although it is my understanding that the parties are in the process of vacating that stay so that the appeal can go forward.

11. **Belize Telecom Ltd. And Innovative Communication Company, LLC v. The Government of Belize**

05-20470-CIV-Ungaro Benares

S.D. Fla.

Action regarding ownership of stock, control of Board, and breach of contract regarding Belize Telecommunications Ltd,

The trial court previously entered an opinion based in part upon a decision of the Belize court. Because the decision of the Belize court was subsequently reversed by the appeals court, a motion for reconsideration of the Florida opinion was filed and is pending.

12. **In re ICC, LLC**

06-10133 (MPW)

Delaware Bankruptcy Court

Involuntary Chapter 11 Bankruptcy Proceeding [brought by Greenlight]

This is the bankruptcy petition filed by the Greenlight parties in Delaware against this entity, but the bankruptcy court has not entered an order of relief as this is a contested involuntary bankruptcy filing. Various motions, including a motion to dismiss, a motion for change of venue and a motion to require the petitioner to post a bond, have been or are about to be filed.

13. **In re Emerging Communications, Inc.**

06-10134 (MPW)

Delaware Bankruptcy Court

Involuntary Chapter 11 Bankruptcy Proceeding [brought by Greenlight]

This is the bankruptcy petition filed by the Greenlight parties in Delaware against this entity, but the bankruptcy court has not entered an order of relief as this is a contested involuntary bankruptcy filing. Various motions, including a motion to dismiss, a motion for change of venue and a motion to require the petitioner to post a bond, have been or are about to be filed.

14. **In re Jeffrey Prosser**

06-10135 (MPW) (Note correction)

Delaware Bankruptcy Court

Involuntary Chapter 11 Bankruptcy Proceeding [brought by Greenlight]

This is the bankruptcy petition filed by the Greenlight parties in Delaware against Prosser, but the bankruptcy court has not entered an order of relief as this is a contested involuntary bankruptcy filing. Various motions, including a motion to dismiss, a motion for change of venue and a motion to require the petitioner to post a bond, have been or are about to be filed.

There are three additional matters you did not inquire about as follows:

1. **Emcom, et. al. v. RTFC**

06-CV-11

V.I. District Court

Action for Contribution

This is an action for contribution against the RTFC filed by the Greenlight defendants (Emcom, et. al.). This complaint alleges that the RTFC should be responsible for some or all of the Greenlight judgments because the RTFC funded the going private transaction even though its own analysis indicated that the shares were being purchased by Prosser at less than the fair market value of the stock

2. **Emcom, et. al. v. Greenlight**

06-CV-34 V.I. District Court

Breach of Contract and Fraud

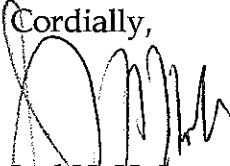
This is an action by Emcom against the Greenlight defendants for negotiating and accepting a payment of \$4.4 million to continue settlement negotiations in good faith when in fact Greenlight has no intention to enter into any such negotiations, nor did it do so.

3. **In Re Emerging Communications, Inc./Greenlight**
42-CV-06 and 43-CV-06
Superior Court of the V.I.

This is an action to reduce the Delaware Greenlight judgements to Virgin Islands judgements against various parties. The defendants have filed a motion contesting this action filed by Greenlight, which has been stayed by the bankruptcy proceedings.

Please let me if you have any additional questions.

Cordially,



Joel H. Holt
JHH/jf

cc: Layne E. Kruze, Esq.
J. Daryl Dodson, Esq.
Richard H. Hunter, Esq.

Prosser Letter 11-05-2009 to PSC re Change of Control

Exhibit F

**Third Amended Civil RICO Complaint
re CFC et al (Draft Not Yet Filed)**

DRAFT

**UNITED STATES DISTRICT COURT
FOR THE UNITED STATES VIRGIN ISLANDS**

Case No. 1:08 CV 107 (Jury Trial Demanded)

JEFFREY J. PROSSER, DAWN PROSSER, ADRIAN PROSSER, and JOHN P. RAYNOR,

PLAINTIFFS,

v.

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION; SHELDON C. PETERSEN; JOHN J. LIST; STEVEN L. LILLY; JOHN M. BORAK; JOHN T. EVANS; RICHARD E. LAROCHELLE; LAWRENCE ZAWALICK; ROBIN CARA REED; and

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; GLENN L. ENGLISH; and

GREENLIGHT CAPITAL, INC.; GREENLIGHT CAPITAL QUALIFIED, L.P.; GREENLIGHT CAPITAL, L. P.; and GREENLIGHT CAPITAL OFFSHORE, LTD.; and

FULBRIGHT & JAWORSKI L.L.P.; TOBY L. GERBER; WILLIAM R. GREENDYKE; and

ROBERT A. CAUDLE; JAMES P. DUNCAN; CLETUS CARTER; TERRY L. JACOBS; ROGER ARTHUR; DARRYL SCHRIVER; REUBEN McBRIDE; J. DAVID WASSON, JR; R. WAYNE STRATTON; and

ALVAREZ & MARSAL, LLC, BRYON P. SYML, VINSON & ELKINS L.L.P., DANIEL C. STEWART, JAMES JAY LEE; and

DELOITTE TOUCHÉ USA LLP; RANDALL B. JOHNSTON, ERNST & YOUNG LLP, and

MOODY'S CORP.; MOODY'S INVESTORS SERVICE, INC.; THE MCGRAW HILL COMPANIES, INC.; FITCH, INC.; FITCH RATINGS, LTD.,

DEFENDANTS.

COMPLAINT TO REDRESS –

- (i) VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT;**
 - (ii) THE VIRGIN ISLANDS CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT (CICO);**
 - (iii) TORTS ACTIONABLE UNDER VIRGIN ISLANDS LAW; AND**
 - (iv) A COMMON LAW CIVIL CONSPIRACY.**
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- INDEX -

	<u>Page</u>	<u>¶ Nos.</u>
Jurisdiction & Venue -----	1	1-2
Parties To The Action		
Plaintiffs -----	1	3
Defendants -----	2	4
Other Parties -----	13	5
Relevant Non-Parties To The Action -----	15	6-7
General Allegations		
CFC's Dominion & Control Over RTFC -----	16	8-16
A Bird's Eye View of CFC's Racketeering Activities -----	20	17-25
Coop Principles -----	22	26-27
CFC's Absolute Legal Requirement: Income Must Be Allocated to the Patron Whose Business Generated CFC's Profit -----	23	28-37
Proof of CFC's Embezzlement -----	26	38-92
Embezzlement Scheme: Directly Related Accounting Fraud - The Single Entity Presentation -----	42	93-115
Embezzlement Scheme: Directly Related Accounting Fraud - The Fair Value Disclosure -----	49	116-129
CFC's Loan Loss Fraud (General)-----	54	130-131
The CoServ Loan Loss Fraud-----	55	132-165
The ICC Loan Loss Fraud -----	69	166-235
The ICC & CoServ Loan Losses: The Numbers -----	95	236-240
CFC's Other Related Reporting & Accounting Fraud -----	96	241-306
CFC's/RTFC's Historical Relationship with Plaintiffs -----	115	307-393
The Miscarriage of Justice in the Bankruptcy Court Proceedings-----	139	394-493
Violations of Federal Law -----	158	494-589
Unlawful Actions: Virgin Islands Law -----	178	590-613
The Racketeering Enterprise & Hierarchy of Defendants -----	182	614-623
Culpability of CFC & CFC's Management Defendants -----	185	624-627
Culpability of NRECA & Defendant English -----	186	628-654
Culpability of Greenlight -----	193	655-662
Culpability of the Fulbright Group -----	195	663-667
Culpability of the CFC's Directors/Officers -----	197	668-674
Culpability of the Chapter 11 Trustee, the Consultants, Springel's Lawyers & Springel -----	200	675-681
Culpability of Defendants Deloitte and Johnston -----	205	682-686
Culpability of Defendant Ernst -----	208	687-696
Culpability of the Credit Rating Agencies -----	213	697-709
Summation -----	217	710
Venue -----	218	711-718
Damages & Counts I thru XII -----	220	719-765

DRAFT

Comes now, the Plaintiffs and for their Claims for Relief against the Defendants state:

JURISDICTION AND VENUE

1. This action arises under the Racketeer Influenced and Corrupt Organizations Act of 1970, *18 U.S.C. § 1961*, and the U. S. Virgin Islands' Racketeering ly Influenced and Corrupt Organizations Act. The court's jurisdiction is invoked under *28 U.S.C. § 1331*; *28 U.S.C. § 1332*; *18 U.S.C. § 1964(c)*; and under the doctrine of pendent jurisdiction.
2. Venue is proper under *18 U.S.C. § 1965(a)*.

PARTIES TO THE ACTION

Plaintiffs

3. The Plaintiffs are as follows:
 - a. Plaintiff JEFFREY J. PROSSER ("Jeff Prosser") is a citizen and resident of the United States Virgin Islands. Jeff Prosser is married to Dawn Prosser ("Dawn Prosser"). Jeff Prosser is the former owner, along with his wife, of Innovative Communication Company, LLC ("ICC-LLC"), a Delaware limited liability company, with its principal office in the Virgin Islands. ICC-LLC formerly owned (and thus Jeff and Dawn Prosser formerly beneficially owned), Emerging Communication Inc. ("EmCom") which is a Delaware corporation with its principal business office in the Virgin Islands. EmCom formerly owned (and thus Jeff and Dawn Prosser formerly beneficially owned) Innovative Communication Corporation ("ICC" or "New ICC¹"), a Virgin Islands corporation with its principal office in the Virgin Islands.
 - b. Plaintiff DAWN PROSSER ("Dawn Prosser") is a citizen and resident of the United States Virgin Islands. Dawn Prosser is married to Plaintiff Jeff Prosser. The term

¹ "Old ICC" refers to a company located in the Virgin Islands that was named Innovative Communication Corporation that in December of 1998 sold its operations to Atlantic Tele-Network Co. ("ATN Co."). Old ICC was dissolved and ATN Co. changed its name to ICC and is known especially in referenced to Old ICC as New ICC.

“Prossers” refers collectively to Jeff Prosser and Dawn Prosser.

c. Plaintiff ADRIAN PROSSER (“Adrian Prosser”) is the son of the Prossers and was a management employee of ICC. Adrian Prosser was then a citizen and resident of the Virgin Islands and, at this time, is a citizen of a state other than the U.S. Virgin Islands.

d. Plaintiff JOHN P. RAYNOR (“Raynor”) was the long-time confidant of Jeff Prosser whom served as a director, consultant and attorney to ICC and its affiliates. The Plaintiff is a citizen of a state other than the U.S. Virgin Islands.

Defendants

4. The Defendants are as follows:

a. Defendant NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (“CFC”) is a tax-exempt (not-for-profit) financing cooperative formed pursuant to the laws of the District of Columbia and operates out of its offices at 2201 Cooperative Way, Herndon, VA 20171. CFC is an unregulated, privately-owned entity. CFC, through the Rural Telephone Finance Cooperative, the Enterprise, has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant CFC is a citizen of a state other than the U.S. Virgin Islands.

b. The Defendants hereinafter which are collectively referred to as “CFC’s Management Defendants” are –

i. Defendant SHELDON C. PETERSEN (“Petersen”) is and since 1995 has been the Governor and Chief Executive Officer (“CEO”) of **CFC and RTFC**. Defendant Petersen is a citizen of a state other than the U.S. Virgin Islands. Upon information and belief, Petersen resides at 510 Fortress Circle, SE, Leesburg, Virginia. Petersen is hereinafter included, as if his name was specifically set forth, within the

phrase “CFC’s Management Defendants”.

ii. Defendant JOHN J. LIST (“List”) is and since 1997 has been the Senior Vice President of Member Services and General Counsel **of CFC and RTFC**. Defendant List is a citizen of a state other than the U.S. Virgin Islands. Upon information and belief, List resides at 3919 Aspen Street, Baltimore, Maryland. List is hereinafter included, as if his name was specifically set forth, within the phrase “CFC’s Management Defendants”.

iii. Defendant STEVEN L. LILLY (“Lilly”) is and since 1994 has been the Senior Vice President and Chief Financial Officer (“CFO”) **of CFC and RTFC**. Lilly resides at 4285 Phoenix Road, Bealeton, Virginia. Upon information and belief, Lilly resides at 4285 Phoenix Road, Bealeton, Virginia. Defendant Lilly is a citizen of a state other than the U.S. Virgin Islands. Lilly is hereinafter included, as if his name was specifically set forth, within the phrase “CFC’s Management Defendants”.

iv. Defendant JOHN M. BORAK (“Borak”) is and since 2002 has been the Senior Vice President of Credit Risk Management **of CFC and RTFC**. Upon information and belief, Borak resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands. Borak is hereinafter included, as if his name was specifically set forth, within the phrase “CFC’s Management Defendants”.

v. Defendant JOHN T. EVANS (“Evans”) is and since 1997 has been the Senior Vice President of Operations **of CFC and RTFC**. Upon information and belief, Evans resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands. Evans is hereinafter included, as if his name was specifically set forth, within the phrase “CFC’s Management Defendants”.

vi. Defendant RICHARD E. LAROCHELLE (“Larochelle”) is and since 1997 has been the Senior Vice President of Corporate Relations of **CFC and RTFC** since 1995. Upon information and belief, Larochelle resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands. Larochelle is hereinafter included, as if his name was specifically set forth, within the phrase “CFC’s Management Defendants”.

vii. Defendant LAWRENCE ZAWALICK (“Zawalick”) is, and has been during all relevant periods, a Senior Vice President of RTFC but also served as an officer and employee of CFC. Upon information and belief, Zawalick resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands.

viii. Defendant ROBIN CARA REED (“Reed”) is, and has been during all relevant periods, the Associate Vice President and Account Manager of **CFC and RTFC**. Upon information and belief, Reed resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands. Reed is hereinafter included, as if her name was specifically set forth, within the phrase “CFC’s Management Defendants”.

Thus the phrase CFC’s Management Defendants as used hereinafter refers to Defendants Petersen, List, Lilly, Borak, Evans, Larochelle, Zawalick and Reed.

c. Defendants NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION (“NRECA”) and GLENN L. ENGLISH (“English”) are –

i. Defendant NRECA, founded in 1942, is a cooperative organization representing the interests of cooperative electric utilities. NRECA was formed pursuant to

the laws of the District of Columbia and is located at 4301 Wilson Blvd., Arlington, VA 22203. CFC was established by NRECA and is managed by NRECA and by NRECA's members. Defendant NRECA is therefore a citizen of a state other than the U.S. Virgin Islands.

ii. Defendant ENGLISH has been Chief Executive Officer of NRECA since March 1994. English served on CFC's Board from 1994 until December of 2005. English previously served in the United States House of Representatives from 1975 to 1994. English served on the House Agriculture Committee from 1975 to 1994, and was Chairman of the House Agricultural Subcommittee on Environment, Credit and Rural Development in 1989. Upon information and belief, Defendant English is a resident of North Carolina. Defendant English is a citizen of a state other than the U.S. Virgin Islands.

d. Defendant GREENLIGHT CAPITAL, INC. ("Capital") is a Delaware Corporation; Defendant GREENLIGHT CAPITAL QUALIFIED, L.P. ("Capital Qualified"), a Delaware limited partnership; Defendant GREENLIGHT CAPITAL, L.P. ("Greenlight Capital"), is a limited partnership, and Defendant GREENLIGHT CAPITAL OFFSHORE, LTD. ("Offshore"), all have their principal office in New York and are legally domiciled in New York or Delaware. Capital, Capital Qualified, Greenlight Capital, and Offshore shall be collectively referred to as "Greenlight". Greenlight has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant Greenlight is therefore a citizen of a state other than the U.S. Virgin Islands.

e. Defendants FULBRIGHT & JAWORSKI L.L.P. ("Fulbright"), is a law firm, and TOBY L. GERBER ("Gerber"), and WILLIAM R. GREENDYKE ("Greendyke") are

two Fulbright partners from Fulbright's Dallas office, more fully described as follows:

i. Defendant FULBRIGHT, a full-service international law firm, serves the needs of businesses, governments, non-profit organizations and individual clients around the world. Fulbright is located at Fulbright Tower, 1301 McKinney, Suite 5100, Houston, TX 77010-3095. Defendant Fulbright has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant Fulbright is a citizen of a state other than the U.S. Virgin Islands. Defendant Fulbright is hereinafter included, as if its name was specifically set forth, within the phrase the "Fulbright Group".

ii. Defendant GERBER is a Fulbright partner whom concentrates his practice in bankruptcy, reorganization and creditor rights, commercial litigation, and the transportation industry and resides in the Dallas/Forth Worth Metroplex Area (Texas) and is a citizen of a state other than the U.S. Virgin Islands. Gerber is hereinafter included, as if his name was specifically set forth, within the phrase the "Fulbright Group".

iii. Defendant GREENDYKE is a Fulbright partner who concentrates his practice in Bankruptcy and Insolvency matters, resides in the Dallas/Forth Worth Metroplex Area (Texas), and is a citizen of a state other than the U.S. Virgin Islands. Greendyke is hereinafter included, as if his name was specifically set forth, within the phrase the "Fulbright Group".

The phrase "Defendant Fulbright Group" and/or "Fulbright Group" refers to Defendants Fulbright, Gerber and Greendyke.

f. The following Defendants are officers of either CFC or RTFC whom were not included in the designation of CFC's Management Defendants because they are not fulltime

employees of CFC. Included in this group of Defendants are -

i. Defendant ROBERT A. CAUDLE (“Caudle”) was a director of CFC since 1999 (for FY 2000²) and had continuous service as a CFC director through FY 2005. Defendant Caudle was CFC’s Secretary-Treasurer in FY 2003, CFC’s Vice President in FY 2004, and CFC’s President for FY 2005. Defendant Caudle was a member of the RTFC Lender Advisory Council during FY 2005. Defendant Caudle is a Trustee for Lea County Electric Cooperative, a member of CFC, located in Lovington, New Mexico. Upon information and belief, Caudle resides in Lea County, New Mexico and is a citizen of a state other than the U.S. Virgin Islands.

ii. Defendant JAMES P. DUNCAN (“Duncan”) was a director of CFC since FY 2000 (for FY 2001) and had continuous service as a CFC director through FY 2006. Defendant Duncan was CFC’s Secretary-Treasurer in FY 2003, CFC’s Vice President for FYs 2004, and CFC’s President for FY 2005. Duncan also served as a member of the RTFC Lender Advisory Council during FYs 2005 & 2006. Defendant Duncan was then a Director of Seminole Electric Cooperative, a CFC Member. Upon information and belief, Duncan resides in Lea County, New Mexico and is a citizen of a state other than the U.S. Virgin Islands.

iii. Defendant CLETUS CARTER (“Carter”) was a director of CFC since 2001 (for FY 2002) and had continuous service as a CFC director through FY 2007. Defendant Carter was CFC’s Secretary-Treasurer during FY 2005, CFC’s Vice President for FY 2006, and CFC’s President for FY 2007. Defendant Carter served as a member of the RTFC Lender Advisory Council during FYs 2005, 2006, and 2007. Defendant Carter

² CFC’s fiscal year ends May 31st; therefore, a Director appointed in 1999 begins service in June of 1999 or the FY 2000 because the first full fiscal year of service ends May 31, 2000.

was then a Director of Tri-County Electric Cooperative, a CFC Member. Upon information and belief, Carter resides in Oklahoma and is a citizen of a state other than the U.S. Virgin Islands.

iv. Defendant TERRY L JACOBS (“Jacobs”) was a director of CFC since 2002 (for FY 2003) and had continuous service as a CFC director through FY 2008. Defendant Jacobs was CFC’s Secretary-Treasurer during FY 2006, CFC’s Vice-President for FY 2007, and CFC’s President for FY 2008. Defendant Jacobs served as a member of the RTFC Lender Advisory Council during FY 2007. Defendant Jacobs was then a Director of Slope Electric Cooperative, Inc, a CFC Member. Upon information and belief, Jacobs resides in North Dakota and is a citizen of a state other than the U.S. Virgin Islands.

v. Defendant ROGER ARTHUR (“Arthur”) was a director of CFC since 2003 (for FY 2004) and had continuous service as a CFC director through FY 2009. Defendant Arthur was CFC’s Secretary-Treasurer during FY 2007, CFC’s Vice President during FY 2008, and CFC’s President during FY 2009. Defendant Arthur served as a member of the RTFC Lender Advisory Council during FY 2007. Defendant Arthur was then a Director of Allamakee-Clayton Electric Cooperative, a CFC Member. Upon information and belief, Arthur resides in Iowa and is a citizen of a state other than the U.S. Virgin Islands.

vi. Defendant DARRYL SCHRIVER (“Schriver”) was a director of CFC since 2004 (for FY 2005). Defendant Schriver was CFC’s Secretary-Treasurer during FY 2008 and Vice President for FY 2009. Defendant Schriver is CFC’s current President – for FY 2010. Defendant Schriver was then a Director and CEO of Taylor

Electric Cooperative, Inc., a CFC Member. Upon information and belief, Schriver resides in Iowa and is a citizen of a state other than the U.S. Virgin Islands.

vii. Defendant REUBEN McBRIDE (“McBride”) was a director of CFC since 2005 (for FY 2006). Defendant McBride was CFC’s Secretary-Treasurer during FY 2008 and is CFC’s current Vice President – for FY 2010. Defendant McBride was then a Director and officer of Graham County Electric Cooperative, a CFC Member. Upon information and belief, McBride resides in Arizona and is a citizen of a state other than the U.S. Virgin Islands.

viii. Defendant J. DAVID WASSON, JR (“Wasson”) was a director of CFC since 2006 (for FY 2007). Defendant Wasson is CFC’s Secretary-Treasurer for FY 2010. Defendant Wasson was then a Director and CEO of New Hampshire Electric Cooperative, Inc., a CFC Member. Upon information and belief, Wasson resides in New Hampshire and is a citizen of a state other than the U.S. Virgin Islands.

ix. Defendant R. WAYNE STRATTON (“Stratton”) since March of 2007 has served and continues to serve as the Financial Expert (as defined by Section 407 of the Sarbanes-Oxley Act of 2002) to the CFC's board of directors and CFC’s Audit Committee. Stratton practices public accountancy with the accounting firm of Jones, Nale & Mattingly PLC Certified Public Accountants, 642 South Fourth Avenue, Suite 300 Louisville, KY 40202-9975. As a director of CFC, Stratton, through CFC and RTFC, has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, Stratton is a resident of Kentucky. Defendant Stratton is a citizen of a state other than the U.S. Virgin Islands. Defendant R. WAYNE STRATTON, when referred to independently, is

hereinafter referred to as “CFC’s Financial Expert” or otherwise, is included within the phrase of “CFC’s Directors/Officers”.

Defendants Caudle, Duncan, Carter, Jacobs, Arthur, Schriver, McBride, Wasson and Stratton are collectively referred to as the “CFC’s Directors/Officers”.

g. The following group of Defendants are all related to bankruptcy business affairs of Innovative Communication Corporation (“ICC” and/or “New ICC” - Virgin Islands Bankruptcy Court case 3:07-bk-30012-JKF), Innovative Communication Company, LLC (“ICC-LLC” - Virgin Islands Bankruptcy Court case 3:06-bk-30008-JKF) and Emerging Communication Inc. (“EmCom” - Virgin Islands Bankruptcy Court case 3:06-bk-30007-JKF).

i. Defendant ALVAREZ & MARSAL LLC (“A&M”) is domiciled at 600 Lexington Avenue, New York, NY 10022. Defendant A&M was engaged by the Trustee, a managing director of A&M, and was materially involved in the management and administrative affairs of the estates of ICC, ICC-LLC, and EmCom. Defendant A&M is a citizen of a state other than the U.S. Virgin Islands.

ii. Defendant BRYON P. SYML (“Syml”) is a manager of A&M’s Miami office and was materially involved in the administration of the business affairs of the Estates of ICC, ICC-LLC, and EmCom. Defendant Syml is a citizen of a state other than the U.S. Virgin Islands.

iii. Defendant VINSON & ELKINS L.L.P. (“V&E”) is an international law firm headquartered in Houston, Texas. Defendant V&E was and is counsel to the Trustee, Stan Springel, whom is responsible for the estates of ICC, ICC-LLC, and EmCom. Defendant V&E is a citizen of a state other than the U.S. Virgin Islands.

iv. Defendants DANIEL C. STEWART (“Stewart”) and JAMES JAY LEE (“Lee”) are partners in Defendant’s V&E’s Dallas office located at 2001 Ross Avenue, Suite 3700, Dallas Texas. Defendant Stewart specializes in practicing bankruptcy law. Defendant Lee’s practice focuses on complex commercial litigation, with a special emphasis on bankruptcy litigation. Upon information and belief, Defendants Stewart and Lee reside in the Dallas-Forth Worth area of Texas and are not residents of the Virgin Islands.

Defendants A&M and Syml are hereinafter collectively referred to as the “Consultants”. Defendants V&E, Stewart & Lee are collectively referred to as “Springel’s Lawyers”.

h. The following Defendants are hereinafter collectively referred as the “External Auditors” which includes –

i. Defendant DELOITTE TOUCHÉ USA LLP (“Deloitte”) is an international public accounting firm that has performed the individual audits of CFC, RTFC, and the National Cooperative Services Corporation (“NCSC”) as well as the Consolidated Audits of CFC, RTFC, and NCSC for all the fiscal years ended after May 31st 2004. The Deloitte office which provided the audit is located at Suite 800, 1750 Tysons Boulevard, McLean, Virginia. Upon information and belief, Defendant Deloitte has conducted business and transacted its affairs in the U.S. Virgin Islands. Defendant Deloitte is a citizen of a state other than the U.S. Virgin Islands.

ii. Defendant RANDALL B. JOHNSTON (“Johnston”) is a former Arthur Anderson LLP (“AA”) partner which preformed the independent audit function of CFC/RTFC before AA ceased operations because of the Enron debacle. Ultimately, Defendant Johnston landed at Deloitte and served as the senior audit partner on the audits

of CFC, RTFC, and NCSC after fiscal year 2004. Upon information and belief, Defendant Johnston resides in the Washington Metropolitan Area and is a citizen of a state other than the U.S. Virgin Islands.

iii. Defendant ERNST & YOUNG LLP (Ernst) is an international public accounting firm that has performed the audits of CFC, RTFC, and the National Cooperative Services Corporation (“NCSC”). Ernst issued Audit Reports with respect to the Combined Audits of CFC and RTFC for fiscal years 2002 and 2003 as well as the Consolidated Audit for CFC, RTFC, and NCSC for fiscal year 2004. Defendant Ernst also issued Audit Reports for the Audits of RTFC for fiscal years 2002, 2003, and 2004. The Combined Audits for the fiscal years ended May 31st 2002 and 2003 and the Consolidated Audit for fiscal year ended May 31, 2004 is hereinafter referred to as the “Ernst Audits”. The Ernst office which was responsible for the audit services is located at McLean, Virginia. Upon information and belief, Ernst has conducted business and transacted its affairs in the U.S. Virgin Islands. Defendant Ernst is a citizen of a state other than the U.S. Virgin Islands.

i. The following Defendants are hereinafter referred to as the “Credit Rating Agencies”, which include:

i. Defendant MOODY'S INVESTORS SERVICE, INC. is a division of MOODY'S CORP., a Delaware corporation (collectively "Moody's"). Defendant Moody's provides credit ratings, research and risk analysis to investors. Moody's also maintains offices located at 250 Greenwich Street, New York, New York 10007. Defendant Moody's is a citizen of a state other than the U.S. Virgin Islands.

ii. Defendant, THE MCGRAW-HILL COMPANIES, INC.

("McGraw Hill") is a New York corporation. Standard & Poor's ("S&P") is a division of McGraw-Hill providing credit ratings, risk evaluation, investment research and data to investors. Defendant S&P is located at 55 Water Street New York, New York 10041. Defendant S&P is a citizen of a state other than the U.S. Virgin Islands.

iii. Defendant FITCH, INC. ("Fitch"), and its affiliate, Defendant FITCH RATINGS, LTD. ("Fitch Ratings") (collectively, "Fitch"), is a credit rating agency that has dual headquarters in New York and London. Defendant Fitch Ratings is a part of Fitch Group, Inc. a subsidiary of a French company, Fimalac, S.A. Defendant Fitch has offices located at One State Street Plaza, New York, NY 10004. Defendant S&P is a citizen of a state other than the U.S. Virgin Islands.

OTHER PARTIES

5. The following are parties that would have been named as Defendants except for absolute immunity and/or other legal doctrines that require the Plaintiffs to take other actions before naming the party as a Defendant.

a. Judge JUDITH K. FITZGERALD (the "Immune Judge") is the bankruptcy judge charged with ultimate responsibilities for the legal proceedings in the bankruptcies of ICC, New ICC, EmCom, and the Chapter 7 Bankruptcy Estate of Jeffrey J. Prosser. Judge Fitzgerald is subject to absolute immunity; however, if she was not immune she would have been named herein as a defendant³ that violated 18 USC § 1962(d).

b. STAN SPRINGEL ("Springel" or the "Chapter 11 Trustee") of Alvarez & Marsal, whom is a managing director of A&M and is based in A&M's San Francisco

³ Jeff Prosser has a pending Motion for Recusal filed; however, to date, the Judge has not addressed the Motion. *See* Case 3:06-bk-30009-JKF Doc 2370 Filed 02/06/09

office. Upon information and belief, Springel resides in San Francisco and is not a resident of the Virgin Islands. The Barton Doctrine precludes Plaintiffs from suing Springel for acts done in his administrative capacity without leave of the appointing court. While Plaintiffs are suing for Springel's overt acts in furtherance of the Racketeering Activities and not for mismanagement of the estate (in essence, suing the Chapter 11 Trustee for acts that can not be deemed part of his official duty or to the extent it was part of the Trustee's official duty, the act was intentionally done or intentionally omitted to be done because of reasons [motivations] diametrically opposed to his official duties), Plaintiffs will comply with the Barton Doctrine before naming the Chapter 11 Trustee as a Defendant.

c. JAMES P. CARROLL ("Carroll" or the "Chapter 7 Trustee") of Carroll Services, LLC, whom is the Trustee of the Chapter 7 Estate of Jeffrey J. Prosser. Carroll resides in Marlboro, Massachusetts and is a citizen of a state other than the Virgin Islands. The Barton Doctrine precludes Plaintiffs from suing Carroll for acts done in his administrative capacity without leave of the appointing court. While Plaintiffs are suing for Carroll's overt acts in furtherance of the Racketeering Activities and not for mismanagement of the estate (in essence, suing the Chapter 7 Trustee for acts that can not be deemed part of his official duty or to the extent it was part of the Trustee's official duty, the act was intentionally done or intentionally omitted to be done because of reasons [motivations] diametrically opposed to his official duties), Plaintiffs will comply with the Barton Doctrine before naming the Chapter 7 Trustee as a Defendant.

d. Acknowledging the difficulty in naming attorneys as Defendants, Greenlight's counsel and the Chapter 7 Trustee's counsel have not been named as

Defendants. Nevertheless, if discovery related to known facts demonstrate that any of the counsel, not so named, were part of any of the unlawful acts, then Plaintiffs reserve the right to add one or more Defendants.

RELEVANT NON-PARTIES TO THE ACTION

6. The entities beneficially owned by ICC-LLC, and therefore beneficially owned by the Prossers before various bankruptcy filings, are:

a. The Virgin Islands Telephone Corporation (“Vitelco”) is a corporation duly formed pursuant to the laws of the United States Virgin Islands, having its principal office in the United States Virgin Islands. Vitelco is the local telephone exchange carrier regulated by the Virgin Islands Public Services Commission and as such is a corporation affected with public interest. Vitelco was a member and Patron of RTFC from 1987 until 2005.

b. Innovative Communication Corporation (“New ICC” or “ICC”), the parent corporation of Vitelco, is a corporation duly formed pursuant to the laws of the United States Virgin Islands, having its principal office in the United States Virgin Islands. New ICC was formerly known as Atlantic Tele-Network Co. (“ATN”). New ICC was an associate (non-voting) member and Patron of RTFC from 1987 until 2005.

c. New ICC owned numerous operating subsidiaries which are not individually named herein.

d. Emerging Communications Inc. (“EmCom”) is a Delaware Corporation, the parent corporation of New ICC, having its principal office in the United States Virgin Islands.

e. Innovative Communication Company, L.L.C. (“ICC-LLC”), the parent

entity of EmCom, is a Delaware Limited Liability Company having its principal office in the United States Virgin Islands.

The term “ICC” or “New ICC” refers to Innovative Communication Corporation and the phrase “ICC Affiliates” means IC-LLC, EmCom, Vitelco, and other affiliates not specifically named.

7. The only other relevant non-party to this action is: National Cooperative Services Corporation (“NCSC”) whose results of operations and financial condition has been and continues to be consolidated with the financial statements of CFC and RTFC for purposes of CFC’s information filed with the Securities and Exchange Commission (the “SEC”). NCSC is commonly owned by the members of Defendant NRECA and Defendant CFC.

GENERAL ALLEGATIONS

CFC’s Dominion & Control Over RTFC

8. CFC’s Management Defendants served dual functions –

a. Defendant Petersen at all relevant time periods has served and continues to serve as the Chief Executive Officer (the “CEO”) of CFC and RTFC;

b. Defendant Lilly at all relevant time periods has served and continues to serve as the Chief Financial Officer (the “CFO”) of CFC and RTFC;

c. Defendant List at all relevant time periods has served and continues to serve as the General Counsel (the “GC”) of CFC and RTFC;

d. Defendant Borak at all relevant time periods has served and continues to serve as the Senior Vice President of Credit Risk Management (the “Credit Manager”) of CFC and RTFC;

e. Defendant Evans at all relevant time periods has served and continues to serve as the Senior Vice President of Operations (the “Operations Manager”) of CFC and

RTFC;

f. Defendant Larochelle at all relevant time periods has served and continues to serve as the Senior Vice President of Corporate Relations (the “Corp. Relations Manager”) of CFC and RTFC;

g. Defendant Zawalick⁴ during all relevant time periods was and is RTFC’s Senior Vice President & Administrative Coordinator and, under information and belief, a Vice President of CFC; and

h. Defendant Reed⁵ at all relevant time periods has served and continues to serve as the Associate Vice President and Account Manager (the “Account Manager”) of CFC and RTFC.

9. From the creation of RTFC through FY 2001 (May 31, 2001), CFC’s dominion and control over RTFC was augmented by an patently illegal voting arrangement. CFC’s 2001 10K, FN 1b, p. 88, states:

“CFC has a \$1,000 membership interest in RTFC. CFC exercises control over RTFC through majority representation on their Boards of Directors.”

The last year CFC controlled the voting of RTFC, RTFC had over 500 Members.

10. Upon information and belief, CFC surrendered the voting arrangement only because of the collapse of Arthur Andersen and a new auditor, Defendant Ernst, which would not accept such a patently unlawful arrangement.

⁴ Regarding Zawalick, CFC’s 2009 10K, p. 67, states:

Mr. Zawalick joined National Rural in 1980. Throughout his career with National Rural, Mr. Zawalick has held various positions. In April 1995, he was appointed Vice President of Business Development for National Rural and Administrative Coordinator of RTFC. In February 2000, Mr. Zawalick was named National Rural’s Senior Vice President of RTFC.

⁵ On March 15, 2000 Robin Reed testified: “RTFC is under a management agreement with CFC so CFC is my employer. I provide services for RTFC.”

11. CFC, with a \$1,000 investment, elected a majority of RTFC's Board in violation of South Dakota statutes (RTFC was then domicile in South Dakota) and in violation of tax law which both implement the coop principle (a key principle that distinguished Coop from other corporations) of **one-member, one-vote**. See *SDCL § 47-16-10*; and *Etter Grain Co. v. United States*, 462 F.2d 259 (5th Cir. Tex. 1972) (These provisions envision tax exempt associations organized according to a model of a widely-based participatory democracy in which all the **members are able to exercise a franchise of equal strength**.)

12. Defendant CFC publishes and promotes coop values and Defendant Petersen lectures upon coops principles including the one-member, one-vote known as Democratic Control⁶ while intentionally denying RTFC members voting control over RTFC.

13. In addition to interlocking management, CFC's strangle-hold over RTFC is augmented through a series of contractual arrangements whereby:

- a. CFC is the sole lender to RTFC;
- b. CFC manages the affairs of RTFC through a long-term management agreement;
- c. All amounts borrowed by RTFC from CFC may be accelerated if RTFC obtains financing from another source; and
- d. All RTFC loans require the approval of the CFC's Loan Advisory Committee.

See CFC's 2002 10K, FN 1b, p. 72.

14. If the foregoing was not enough, CFC cements CFC's domination of RTFC's business affairs by:

⁶ "Democratic control refers to the periodic assembly of the members at a democratically conducted meeting at which each member ordinarily has only one vote." See General Counsel Memorandum 38061; 1979 GCM LEXIS 372.

a. Generally insuring that RTFC's outside counsel involved in general representation of RTFC⁷, besides reporting to CFC's General Counsel serving as RTFC's General Counsel, are employed to simultaneously represent CFC;

b. Insuring that RTFC's auditors are employed to simultaneously audit CFC. RTFC is denied independent counsel and accountants especially in relationship with RTFC dealings with CFC;

c. Insuring RTFC does not have a single officer involved in the day-to-day business affairs that is not a CFC employee; and

d. While RTFC must be a member to be a patron (borrower) of CFC, CFC structured the arrangement do that RTFC is a non-voting member⁸ of CFC with no say in CFC's business affairs.

15. CFC's domination over RTFC and RTFC's business affairs is so complete that CFC has referred to RTFC:

a. As "a controlled affiliate of CFC" even though CFC was one (1) member out of five hundred sixteen (516) RTFC members. *See* CFC's 2001 10K, FN 1a, p. 58.

b. As CFC's "affiliated organization" even though CFC has NO ownership interest whatsoever in RTFC. *See* CFC's 2002 10K, p. 11.

c. As a "managed affiliate" of CFC even though CFC has NO ownership interest whatsoever in RTFC. *See* CFC's press release dated 1/30/2009, announcing CFC's credit bid for ICC.

A 'loan shark' would be envious of CFC's control over RTFC.

⁷ RTFC does not have independent counsel in defending this action even though RTFC is the enterprise.

⁸ CFC's 2004 10K, p. 101, states "RTFC is a class E member of CFC." On page 2, CFC describes Class E Members as Associates are not entitled to vote at any meeting of the members and are not eligible to be represented on CFC's board of directors."

16. The dominion and control over RTFC is essential to the conduct of CFC's racketeering enterprise which is conducted, in part, through RTFC.

A Bird's Eye View of CFC's Racketeering Activities

17. Many of the Racketeering Activities involve the relationship of two cooperative associations (hereinafter "coops"): CFC, the perpetrator of the fraud and the Racketeering Activities, and RTFC, the Enterprise.

18. RTFC, a financing coop, is engaged in a legitimate business of lending to rural telephone companies which are members of RTFC ("Telephone Members"). CFC manages RTFC and is the exclusive provider of funds to RTFC.

19. CFC, a financing coop, is a niche lender. CFC lends:

- a. directly to rural electric companies which are its members which are electric coops ("Electric Members"); and
- b. indirectly, to rural telephone companies through loans to RTFC which in turn fund RTFC loans to Telephone Members

RTFC is a direct patron of CFC and RTFC's Telephone Members are indirect patrons of CFC.

20. RTFC is and always has been a non-voting member of CFC⁹; therefore, RTFC and RTFC's Telephone Members have no input, no vote, or no say in CFC's allocation of patronage income among CFC's Electric Members and RTFC.

21. CFC is a tax-exempt coop pursuant to 26 U.S.C. § 501(c)(4). This means CFC must operate in accord with its articles in order to remain eligible for its tax-exempt status. Even CFC acknowledges this fact stating as one of the risk factors that "We [CFC] could jeopardize our federal tax exemption if we fail to conduct our business in accordance with our exemption

⁹ Both CFC and RTFC lend only to members.

from the Internal Revenue Service.” *See* 2009 10K, p. 15.

22. An equally important and relevant consideration is that RTFC is a taxable coop that pays income tax based on its net margins, excluding net margins allocated to its members, as allowed by law pursuant to Subchapter T of the Internal Revenue Code. Thus embezzling from RTFC affects the income tax returns of over 500 companies by having each unknowingly underreport income.

23. The first set of Racketeering Activities (the “**Embezzlement Scheme**”) involves CFC’s unlawful operation of RTFC pursuant to a long-term scheme to systematically embezzle income that belongs to RTFC and thus RTFC’s Telephone members and further activities (continuous acts of accounting and securities fraud) to conceal the Embezzlement Scheme from investors and RTFC members. A fraud upon RTFC is a fraud upon RTFC’s Telephone Members which under coop law (principles) own RTFC’s income and to which the income is allocated in the form of patronage income.

24. The second set of Racketeering Activities (the “**Whistle Blower Racketeering Activities**”) directly relates to the Plaintiffs which discovered CFC’s Embezzlement Scheme. CFC, acting through RTFC, engaged in Whistle Blower Racketeering Activities that were extortionary, retaliatory and designed to crush and suppress Plaintiffs in order to conceal such Racketeering Activities related to the Embezzlement Scheme from investors and RTFC members through material omissions and material misrepresentations of the RTFC/Prosser dispute. The object was to avoid accountability and to continue with CFC’s ongoing activities as a racketeering enterprise.

25. Lastly, CFC’s Racketeering Activities involve the concealment of catastrophic loan losses which CFC has experienced but cannot afford to recognize so CFC engaged in

accounting fraud related to the loan portfolio and loan loss reserve.

Coop Principles

26. Coops can be incorporated or unincorporated entities which operate the business “on a cooperative basis”. There are three fundamental characteristics to coops, which are:

(a) Subordination of capital which means that a members’ capital¹⁰ (which nevertheless must be allocated to the members and is deemed owned by members) may be retained by the coop if necessary for the greater good of the Coop and all members;

(b) Democratic control of the coop by the worker-members themselves means one-member, one-vote in contrast to voting based upon ownership of the coop’s capital; and

(c) The vesting in and the allocation among the worker-members of all fruits and increases arising from their cooperative endeavor in proportion to the worker-members' active participation in the cooperative endeavor (referred to as the “operation at cost” principle or the Internal Revenue Service’s characterization as “operating as a conduit”) which means the coops earnings are in reality the coop member’s earnings whose patronage (business) generated the profit.

The foregoing is based upon *IRS General Counsel Memorandum on Cooperative Netting*, GCM 38061, 1979 WL 52855 citing *Puget Sound Plywood, Inc. v. Commissioner*, 44 T.C. 305 (1965).

27. These principles are essential to understanding the racketeering enterprise; for instance, as developed hereinafter, CFC would not be a tax-exempt entity but for the application of coop principles (in fact CFC operates in complete disregard of those principles).

¹⁰ All coop capital and earnings are deemed to be the members’ capital and earnings; thus, the subordination of capital refers to the fact that coops may retain an individual member’s capital and earnings to serve the needs of the collective represented by the coop entity.

CFC's Absolute Legal Requirement: Income Must Be Allocated to the Patron

Whose Business Generated CFC's Profit

28. CFC's Articles of Organization and CFC's bylaws, have **mandatory requirements** regarding the allocation of CFC's Net Margin (net income) which are NOT elective. The provisions are required as a 'matter of law' in order for CFC to qualify for a tax exemption pursuant to 26 U.S.C. § 501(c)(4).

29. 26 U.S.C. § 501(c)(4) requires CFC to –

- a. not be organized for profit (26 U.S.C. § 501(c)(4)(a));
- b. operate exclusively for the promotion of social welfare (26 U.S.C. § 501(c)(4)(a));
- c. devote the net earnings '**exclusively**' to charitable, educational, or recreational purposes (26 U.S.C. § 501(c)(4)(a)); and
- d. the requirement in subparagraph (c) is further emboldened with the prohibition that "no part of the net earnings of such entity inures to the benefit of any private shareholder or individual" (26 U.S.C. § 501(c)(4)(b)).

30. CFC distributed cash patronage dividends to their members. Distributions of cash patronage dividends appear to be at odds with the legal requirements:

- (i) that net earning must be devoted "exclusively" to charitable, educational, or recreational purposes (26 U.S.C. § 501(c)(4)(a)); and
- (ii) the prohibition of 26 U.S.C. § 501(c)(4)(b) that "no part of the net earnings of such entity inures to the benefit of any private shareholder or individual."

31. Tax-exempt coops legally circumvent the strict legal requirements¹¹ of 26 U.S.C.

¹¹ The only differences between an IRC § 501(c)(3) organization (which include churches and schools) and a (c)(4) organization is that contributions to (c)(3) organizations are deductible and contributions to (c)(4) organizations are

§ 501(c)(4) because of an **accepted tax fiction applicable to all coops**¹². A recent tax court case, *Affiliated Foods, Inc. v. Comm'r*, 128 T.C. 62, 85 (T.C. 2007), discussed the two accepted fictions: (i) the so-called “**agency theory**” (the cooperative is conceived of as an agent, bailee, or trustee for the patrons, serving merely as a ‘conduit’ for their income which it does not own¹³) and (ii) “**price adjustment theory**” (upon the theory that patronage dividends are in reality rebates on purchases or deferred payments on sales¹⁴ allocated or distributed pursuant to a pre-existing obligation of the cooperative).

32. Under either tax fiction applicable to all coops, in essence, **the patron is the owner**¹⁵ of the profit contributed as a result of the patron’s business. This case involves CFC’s allocation of RTFC’s profit to Electric Members as well as fraudulent activity directly and indirectly related thereto.

33. CFC qualifies for tax exempt status **only because** Article XI, sections 1, 4(a) and 4(e) of CFC’s bylaws integrate the accepted tax fiction into CFC’s bylaws by explicitly stating:

Section 1: Nonprofit Operation. The Association shall at all times be operated ... for the primary and **mutual benefit** of its patrons. ... **All net savings**, representing the excess of revenues over operating costs and expenses, **shall be received** by the Association **with the understanding** that they **are furnished by its patrons as capital** and that the Association is obligated to pay by credits to a capital account ... for each patron ... **in proportion to their patronage**. (Emphasis Added)

Section 4(a). Patronage Capital Certificates. ... that at the end of each fiscal year the amount of patronage capital, if any, in the form of **net savings so furnished by each**

not deductible and further, (c)(4) organizations, but not (c)(3) organizations, are permitted to engage in substantial lobbying to advance their exempt purposes. *Regan v. Taxation with Representation*, 461 U.S. 540, 543 (U.S. 1983).

¹² It is the unique nature of coops recognized by law including tax law.

¹³ In the case of a financing coop, the excess profit derived from the patrons’ interest payments belong to the patron or patrons that made the interest payments.

¹⁴ In the case of a financing coop, the patronage allocation is deemed an interest rate adjustment.

¹⁵ Even though the profit is held by the coop; hence, the requirement to allocate profits to the patron’s capital account.

patron is clearly reflected and credited in an appropriate record to the capital account of **each patron**. ... (Emphasis Added)

Section 4(e). The patrons of the Association, by dealing with the Association, acknowledge that the terms and conditions of the Articles of Incorporation and Bylaws shall constitute and be a contract between the Association and each patron, and both the Association and the patron are bound by such contract as fully as though each patron had individually signed a separate instrument containing such terms and provisions.

With respect to IRC §501(c)(3) organizations, this is referred to as the Organizational Tests: to be granted tax-exempt status the organizational documents of the applicant must comply¹⁶ with the requirements of tax law.

34. CFC's bylaws implement the tax fiction (as well as a unique characteristic of coops) by mandating that providing that net savings are received by CFC "are furnished by its patrons as capital ... in proportion to their patronage" coupled with the requirement that the "net savings so furnished by *each* patron is clearly reflected and credited ... to the capital account of each patron." Under those provisions, RTFC owns its contribution to CFC's income.

35. CFC appears to be **tax compliant** with the agency theory (conduit) and/or under the price adjustment theory (rebates) because, CFC's bylaws require patronage income to be allocated among the patrons based upon the income "so furnished by *each* patron" and the net savings contributed by the patron are deemed capital contributions by the patron (CFC bylaws, Art. XI, Sec. 1).

36. Nevertheless, to effect the Embezzlement Scheme, CFC does NOT allocate income consistent with CFC's bylaws. CFC embezzles from RTFC by allocating income which is generated by RTFC's loans and is RTFC's income (and under the bylaws, capital contributions of RTFC) to CFC's voting members, the Electric Members.

37. CFC's allocations of RTFC income to the Electric Members is an ultra vires

¹⁶ CFC filed an IRS Form 1024 which requires the submission of complete conformed copies of CFC's organization documents in order to be granted tax exempt status.

allocation in direct contradiction of express provisions of the CFC bylaws and also violates CFC's tax-exempt status – one of many tax frauds committed by CFC.

Proof of CFC's Embezzlement Scheme

38. The Embezzlement Scheme is proven by audited financial statements which are published at CFC's direction and under CFC's control. Thus the Embezzlement Scheme is proven by CFC's own information.

39. CFC's and RTFC's fiscal year-end is May 31st of each year.

40. CFC is registrant within the meaning of *17 C.F.R. 210.1-02(t)*, the Securities Exchange Act of 1934, as amended, because CFC issues debt instruments listed on the New York Stock Exchange, debt instruments through an extensive broker/dealer network, and debt instruments to its members.

41. As a registrant, CFC publicly files reports with the Securities and Exchange Commission ("SEC") which includes filing quarterly reports, SEC Form 10Qs, and filing annual reports, SEC Form 10Ks.

42. CFC's 10K for the fiscal year ended May 31, 2002 ("FY 2002") stated in Segment Information footnote, a mandatory disclosure pursuant to Generally Accepted Accounting Principles ("GAAP"), Footnote 13, on page 97 of the FY 2002 10K that:

The **new presentation** provides a breakout of the income statement between electric loans and telecommunications loans that reflects the full gross margin earned by each portfolio. The telecommunications system income statement now represents the **total earned on telecommunications loans at both the CFC and RTFC levels**. The electric system income statement is **now only** the amount earned on loans to electric member systems. (Emphasis added)

CFC earns money at the CFC level (within CFC) from RTFC because of loans from CFC¹⁷ to RTFC to fund telephone loans to the Telephone Members; thus, the statement "total earned on

¹⁷ Note that CFC's management is one both sides of the inter-coop loans.

telecommunications loans at both the CFC and RTFC levels” refers to the profit from Telephone Members’ loans part of which is captured within CFC and part of which is left with RTFC.

43. The Embezzlement Scheme involves the RTFC income captured within CFC and which is allocated to Electric Members whom did not contribute that profit.

44. Pursuant to 18 U.S.C. § 1350 (a Sarbanes-Oxley amendment) both Steven L. Lilly, CFC’s and RTFC’s Chief Financial Officer, and Sheldon C. Petersen, , CFC’s and RTFC’s Chief Executive Officer, certified, subject to racketeering penalties, that “The information in the Report [which includes the Segment Information] fairly presents, in all material respects, the financial condition and results of operations of CFC.”

45. The Embezzlement Scheme is proven by a simple comparison of the Audited Financial Statements of RTFC to the Segment Information footnote set forth as an integral part of CFC’s Audited Financial Statements. Segment Information is a mandatory disclosure pursuant to GAAP.

46. CFC SEC Form 10K (“CFC’s 10K”) for FY 2002¹⁸, Footnote (“FN”) 13, page 98, reports the following Segment Information **for FY 2000**:

(Dollar amounts in thousands)	For the year ended May 31, 2000		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 780,809	\$ 240,189	\$ 1,020,998
Cost of funds	688,271	173,053	861,324
Gross margin	92,538	67,136	159,674
General and administrative expenses	21,256	5,730	26,986
Provision for loan losses	6,155	11,200	17,355
Net margin	\$ 65,127	\$ 50,206	\$ 115,333
Assets:			
Loans outstanding, net	\$ 12,807,525	\$ 3,642,228	\$ 16,449,753
Other assets	499,129	134,558	633,687
Total assets	\$ 13,306,654	\$ 3,776,786	\$ 17,083,440

¹⁸ CFC SEC Form 10 K for FY 2007 and other references to 10Ks will be “2002 10K.”

Telecommunications systems refer to RTFC loans (see paragraph 42 above).

47. RTFC's 2001 Annual Report reports the following Audited Income Statement **for FY 2000**:

RURAL TELEPHONE FINANCE COOPERATIVE

Statements of Income, Expenses and Net Margins

For the Years Ended May 31, 2001 and 2000

	2001	2000
Operating Income – Interest on loans	\$ 419,523,919	240,189,383
Less – Cost of funds	415,127,567	236,126,623
Gross operating margin	4,396,352	4,062,760
General and Administrative Expenses	578,951	565,657
Operating margin	3,817,401	3,497,103
Non-Operating Income		
Patronage capital allocation from CFC	34,187,286	23,344,638
Interest income from Commercial Paper investment	93,153	38,140
Total Non-Operating Income	34,280,439	23,382,778
Net Margin	\$ 38,097,840	26,879,881

The accompanying notes are an integral part of these financial statements.

48. Thus, for FY 2000 RTFC Audited Income Statement reported income of nearly \$27 Million while in the CFC's SEC filings (in the Segment Information) reported RTFC's contribution to the Combined Earnings of CFC/RTFC at over \$50 Million (after allowance for loan losses). **This is the embezzlement of over \$23 Million** – nearly as much income as RTFC reported earning.

49. CFC has never proffered an explanation of the \$23 Million discrepancy for FY 2000.

50. CFC's 2002 10K, Footnote ("FN") 13, page 98, reports the following Segment Information **for FY 2001**:

(Dollar amounts in thousands)

	For the year ended May 31, 2001		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 968,771	\$ 419,524	\$ 1,388,295
Cost of funds	<u>804,384</u>	<u>313,455</u>	<u>1,117,839</u>
Gross margin	164,387	106,069	270,456
General and administrative expenses	23,790	8,696	32,486
Provision for loan losses	<u>74,404</u>	<u>30,800</u>	<u>105,204</u>
Net margin	\$ 66,193	\$ 66,573	\$ 132,766
Assets:			
Loans outstanding, net	\$ 14,113,354	\$ 5,238,599	\$ 19,351,953
Other assets	<u>473,734</u>	<u>173,155</u>	<u>646,889</u>
Total assets	<u>\$ 14,587,088</u>	<u>\$ 5,411,754</u>	<u>\$ 19,998,842</u>

Note that RTFC earnings contribution **exceeds** Electric Members earnings contribution even though Telephone Loan Portfolio is only \$5.4 Billion of a \$20 Billion Total Loan Portfolio.

51. RTFC's 2001 Annual Report reports \$38 Million as RTFC's income in the 2001 Audited Income Statement **for FY 2001** (see paragraph 47 above that reports RTFC's Net Margin [income] at \$38,097,840).

52. Thus, for FY 2001 RTFC Audited Income Statement reported income of slightly over \$38 Million while in the CFC's SEC filings (the Segment Information) reported RTFC's contribution to the Combined Earnings of CFC/RTFC at over \$66 Million (after allowance for loan losses). **This is an embezzlement of over \$28 Million for FY 2001.**

53. CFC has never proffered an explanation of the \$28 Million FY 2001 discrepancy.

54. CFC's 2002 10K, Footnote ("FN") 13, page 98, reports the following Segment Information **for FY 2002:**

	For the year ended May 31, 2002		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 812,768	\$ 373,765	\$ 1,186,533
Cost of funds	<u>628,651</u>	<u>257,187</u>	<u>885,838</u>
Gross margin	184,117	116,578	300,695
General and administrative expenses	27,593	9,919	37,512
Provision for loan losses	<u>144,349</u>	<u>55,000</u>	<u>199,349</u>

Operating margin	12,175	51,659	63,834
SFAS 133 cash settlements	24,264	9,927	34,191
SFAS 133 forward value	30,804	11,074	41,878
Cumulative effect of change in accounting principle	20,878	7,505	28,383
Net margin	<u>\$ 88,121</u>	<u>\$ 80,165</u>	<u>\$ 168,286</u>
Assets:			
Loans outstanding, net	\$ 14,604,091	\$ 4,936,276	\$ 19,540,367
Other assets	575,931	207,044	782,975
Total assets	<u>\$ 15,180,022</u>	<u>\$ 5,143,320</u>	<u>\$ 20,323,342</u>

55. RTFC's 2003 Annual Report reports the following Audited Income Statement for FY 2002:

statements of income, expenses and net margin

For the years ended May 31, 2003 and 2002	2003	2002
OPERATING INCOME — Interest on loans	\$ 344,491,756	373,765,221
Less — Cost of funds	337,602,152	367,894,050
Gross operating margin	6,889,604	5,871,171
GENERAL AND ADMINISTRATIVE EXPENSES	846,122	641,863
GUARANTY FEE EXPENSE TO CFC	773,504	374,253
MANAGEMENT FEE EXPENSE TO CFC	2,507,552	1,675,340
Operating margin	2,762,426	3,179,715
NON-OPERATING INCOME		
Patronage capital allocation from CFC	25,150,995	23,636,017
TOTAL NON-OPERATING INCOME	25,150,995	23,636,017
NET MARGIN	<u>\$ 27,913,421</u>	<u>26,815,732</u>

See accompanying notes.

Observe, that RTFC reported less income for FY 2002 than FY 2001 even though RTFC's contribution increased by \$13 Million. FY 2002 RTFC income declined to \$26.8 Million in FY 2002 from \$38.1 Million in FY 2001 (see Paragraph 47 above which has RTFC's Audited Income Statement for FY 2001) even though RTFC's contribution per the Segment Information increased from \$66.6 (see paragraph 50) for FY 2001 to \$80.2 Million for FY 2002 (see

paragraph 54). Simply, without any further adjustment, it is apparent that CFC embezzled more¹⁹ from RTFC for FY 2002 than FY 2001.

56. Thus, for FY 2002 RTFC Audited Income Statement reported income of nearly \$27 Million while CFC's FY 2002 SEC filings reported RTFC's contribution to the Combined Earnings of CFC/RTFC at over \$80 Million (after allowance for loan losses). This is an **embezzlement of over \$53 Million** – more income was embezzled from RTFC than RTFC reported earning.

57. The above **understates the theft for FY 2002**. The discrepancy needs to be adjusted for a contractual relationship between CFC and RTFC that alters their financial relationship for fiscal years 2002 and later. Ironically, the most forthright explanation of the contractual change is in the 2004 10K. The contractual provision is explained in the FY 2006 10K, on page 23, as follows:

“CFC has agreed to indemnify RTFC and NCSC for loan losses, with the exception of the NCSC consumer loans that are covered by the NCSC loan loss allowance. Therefore, there is no loan loss allowance required at RTFC and only a small loan loss allowance is required at NCSC to cover the exposure to consumer loans.”

Thus, for a fee, **CFC²⁰ indemnifies RTFC for all loan losses** after FY 2001.

58. RTFC's guaranty fee of \$.374 Million decreases RTFC's income as reported in the Segment Information; however, reversing the loan loss adjustment of \$55 Million increases RTFC's income as reported in the Segment Information.

59. The foregoing adjustments for the guaranty agreement actually increase RTFC's Segment Income contribution from the \$80 Million reported to approximately \$135 Million;

¹⁹ CFC had a \$1 Billion loan, the CoServ Loan, which was a troubled loan.

²⁰ This was not a gratuitous provision but a perceived accounting requirement to fraudulently present CFC and RTFC as a single entity for financial presentation purposes even though CFC had no voting control or ownership interest in RTFC. This will be addressed later in the complaint.

thus, dramatically increasing the deficiency or sums embezzled from \$ 53 Million for FY 2002.

60. Additionally, for years after FY 2001 (thus for FY 2002) adjustments must be made removing the income reported as “SFAS 133 forward value” of \$11 Million and the “Cumulative effect of change in accounting principle” of \$7.5 Million for a total adjustment of \$19 Million (collectively, the “Fair Value Adjustments”). The Fair Value Adjustments reflected as income and/or expense are excluded in determining the income for purposes of patronage income and distributions.

61. The Fair Value Adjustments reduce RTFC’s Segment Contribution from \$135 Million by \$19 Million to \$116 Million.

62. In conclusion, RTFC Audited Income Statement for FY 2002 reported income of nearly \$27 Million while CFC’s FY 2002 SEC filings reported RTFC’s contribution to the Combined Earnings of CFC/RTFC at over \$80 Million which adjusted equates to over \$116 Million. **This is a embezzlement of over \$89 Million for FY 2002** – more than twice RTFC’s reported earnings.

63. CFC has never proffered an explanation of the \$89 Million FY 2002 discrepancy.

64. CFC SEC Form 10K for FY 2004, Footnote (“FN”) 15, page 135, reports the following Segment Information **for FY 2003**:

	For the year ended May 31, 2003		
	Electric Systems	Telecommunications Systems	Total
(Dollar amounts in thousands)			
Income statement:			
Operating income	\$ 726,384	\$ 344,491	\$ 1,070,875
Cost of funds	(652,991)	(277,856)	(930,847)
Gross margin	73,393	66,635	140,028
Operating expenses:			
General and administrative expenses	(28,609)	(9,560)	(38,169)
Provision for loan losses	(5,777)	(37,294)	(43,071)
(Provision) recovery for guarantee losses	(25,330)	135	(25,195)
Total operating expenses	(59,716)	(46,719)	(106,435)
Results of operations of foreclosed	1,249	—	1,249

assets			
Impairment loss on foreclosed assets	(19,689)	—	(19,689)
Total loss on foreclosed assets	(18,440)	—	(18,440)
Derivative cash settlements	86,162	36,663	122,825
Derivative forward value	567,564	189,648	757,212
Foreign currency adjustments	(182,304)	(60,916)	(243,220)
Net margin	\$ 466,659	\$ 185,311	\$ 651,970

65. RTFC's income reported by CFC in the Segment Information must be adjusted for (i) the loan loss adjustment of \$37 Million which adjustment increases RTFC's income; (ii) the net Fair Value Adjustments of \$128 Million which adjustment decreases RTFC's income; and (iii) the RTFC guaranty fee of \$0.773 Million which adjustment decreases RTFC's income.

66. RTFC Segment Information contribution for FY 2003 **adjusted** (per foregoing paragraph) is nearly \$94 Million.

67. RTFC Audited Income Statement for FY 2003 reported income of nearly \$28 Million (see ¶ 41 above). **The embezzlement is approximately \$65 Million for FY 2003** – more than twice the income RTFC was allocated.

68. CFC has never proffered an explanation of the \$65 Million FY 2003 discrepancy.

69. CFC SEC Form 10K for FY 2004, Footnote ("FN") 15, page 134, reports the following Segment Information **for FY 2004**:

	For the year ended May 31, 2004			
	Electric Systems	Telecommunications Systems	Other	Total
(Dollar amounts in thousands)				
Income statement:				
Operating income	\$ 682,199	\$ 307,305	\$ 16,016	\$ 1,005,520
Cost of funds	(662,386)	(245,252)	(6,590)	(914,228)
Gross margin	19,813	62,053	9,426	91,292
Operating expenses:				
General and administrative expenses	(35,168)	(4,267)	(957)	(40,392)
Recovery (provision) for loan losses	98,538	(145,927)	(7,532)	(54,921)
Recovery (provision) for	1,152	66	(367)	851

guarantee losses				
Total operating expenses	64,522	(150,128)	(8,856)	(94,462)
Results of operations of foreclosed assets	3,818	—	—	3,818
Impairment loss on foreclosed assets	(10,877)	—	—	(10,877)
Total loss on foreclosed assets	(7,059)	—	—	(7,059)
Derivative cash settlements	82,064	26,118	1,905	110,087
Derivative forward value	(170,804)	(54,362)	(3,966)	(229,132)
Foreign currency adjustments	(48,685)	(15,495)	(1,130)	(65,310)
Total loss on derivative and foreign currency adjustments	(137,425)	(43,739)	(3,191)	(184,355)
Operating loss	(60,149)	(131,814)	(2,621)	(194,584)
Income tax expense	(35)	(217)	(3,565)	(3,817)
Minority interest — RTFC and NCSC net margin	—	(1,989)	—	(1,989)
Cumulative effect of change in accounting principle	—	—	22,369	22,369
Net (loss) margin	\$ (60,184)	\$ (134,020)	\$ 16,183	\$ (178,021)

70. RTFC's income reported by CFC in the Segment Information must be adjusted for (i) the loan loss adjustment of \$146 Million which adjustment increases RTFC's income; (ii) the net Fair Value Adjustments of \$70 Million which adjustment increases RTFC's income; and (iii) the RTFC guaranty fee of \$1 Million which adjustment decreases RTFC's income.

71. RTFC's contribution or income pursuant to the **adjusted** (per foregoing paragraph) Segment Information for FY 2004 is nearly \$83 Million.

72. The Audited Income Statement from the RTFC 2004 Annual Report reports RTFC's income for FY 2004 as:

	<u>2004</u>	<u>2003</u>
OPERATING INCOME	\$ 306,579,369	\$ 344,491,756
Less: Cost of funds	<u>300,281,490</u>	<u>337,602,152</u>
Gross operating margin	6,297,879	6,889,604
GENERAL AND ADMINISTRATIVE EXPENSES	821,871	811,022
GUARANTY FEE EXPENSE TO CFC	1,018,980	773,504
MANAGEMENT FEE EXPENSE TO CFC	<u>2,414,831</u>	<u>2,507,552</u>
Total Expenses	4,255,682	4,092,078
Operating margin	<u>2,042,197</u>	<u>2,797,526</u>
NON-OPERATING INCOME		
Patronage capital allocation from CFC	<u>24,215,258</u>	<u>25,150,995</u>
TOTAL NON-OPERATING INCOME	24,215,258	25,150,995
NET MARGIN BEFORE INCOME TAXES	\$ 26,257,455	\$ 27,948,521
INCOME TAX EXPENSE	52,500	35,100
NET MARGIN	<u>\$ 26,204,955</u>	<u>\$ 27,913,421</u>

73. For FY 2004 RTFC reported over \$26 Million while RTFC's adjusted contribution per the Segment Information was nearly \$83 Million, **an embezzlement of nearly \$57 Million for FY 2004** or more than twice the income RTFC reported.

74. CFC has never proffered an explanation of the \$57 Million FY 2004 discrepancy.

75. The sums embezzled (the discrepancies) from RTFC and the Telephone Members by CFC derived from in the comparison of Segment Information as publicly reported as compared to RTFC Income statement, both of which are audited, for FYs 2000 through 2004, inclusive, **is over \$262 Million** - \$23 Million for FY 2000; \$28 Million for FY 2002; \$89 Million for FY 2002; \$65 Million for FY 2003; and \$57 Million for FY 2004.

76. The following table demonstrates the effect of the Embezzlement Scheme integrating the **cash patronage dividends** (the patronage capital payouts) demonstrating the

discrepancy between sums contributed and CFC payouts. The following table addresses only FYs 2000 thru 2004, **the only years for which CFC published transparent segment information.** “RTC” refers to rural telecommunications companies and “REC” refers to rural electric companies.

Fiscal Year -	Segment Information's		RTFC's Audited		Patronage Cash Dividends	
	<u>Adjusted Net Margin</u>		<u>Income</u>			
	<u>RTCs</u>	<u>RECs</u>	<u>Statement</u>	<u>Embezzlement</u>	<u>RTCs</u>	<u>RECs</u>
2000	50,206	65,127	26,880	23,326	18,816	58,623
2001	66,573	66,193	38,098	28,475	26,669	71,654
2002	116,212	(18,187)	26,816	89,396	18,771	55,851
2003	92,964	45,014	27,913	65,051	19,539	51,037
2004	<u>82,668</u>	<u>6,564</u>	<u>26,205</u>	<u>56,463</u>	<u>19,539</u>	<u>59,412</u>
	<u>408,623</u>	<u>164,711</u>	<u>145,912</u>	<u>262,711</u>	<u>103,334</u>	<u>296,577</u>
	<u>71.27%</u>	<u>28.73%</u>			<u>25.84%</u>	<u>74.16%</u>
	<u>100.00%</u>				<u>100.00%</u>	

77. Based upon the table in the foregoing paragraph for FYs 2000 thru 2004, inclusive, Electric Members contributed \$165 Million and received cash patronage dividends of \$297 Million or \$132 Million more than contributed. RTFC Members, in the same span, contributed \$408 Million and received cash patronage dividends of \$103 Million or \$305 Million less than contributed. Thus, RTFC Members or the Telephone Loan portfolio contributed 71.27% of CFC's/RTFC's Net Margin and received only 25.86% of the cash patronage distributions while Electric Members or the Electric Loan Portfolio contributed 28.73% of CFC's/RTFC's Net Margin and received 74.16% of the cash patronage distributions.

78. The Embezzlement Scheme netted CFC's Electric Members \$262 Million over a five year period commencing FY 2000 and ending FY 2004.

Pre-2000 Fiscal Years and Post-2004 Fiscal Years

79. The sums embezzled from RTFC pursuant to the Embezzlement Scheme for FYs

before FY 2000 and after FY 2004 can not be determined because CFC fraudulently reports Segment Information in a material departure from GAAP.

80. The FY 2002 10K, FN 13, page 97, states:

“CFC operates in two business segments - rural electric lending and rural telecommunications lending. ... [than, referring to FYs before FY 2001] The amount reported for the electric systems represented the total earned on loans from CFC to its electric members and RTFC. The amount reported for the telecommunications systems represented the incremental amount earned on its CFC loans that it re-lent to the telecommunications systems.”

The foregoing is an admission by CFC that the results of the Electric Loan Portfolio included “total earned on loans from CFC to ... RTFC” for fiscal years before FY 2002. The Telephone Loan Portfolio only reported as income “the incremental amount earned [by RTFC] on its CFC loans that it re-lent to the telecommunications systems.”

81. A comparison of the Segment Information as originally reported for FY 2000 and FY 2001 (the overlap years) illustrates the effect of CFC’s fraudulent reporting style.

a. “FY 2000” as reported in the 2001 10K, FN 11, p. 78 –

“FY 2000” As Originally Reported

	For the year ended May 31, 2000		
(Dollar amounts in thousands)	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 780,809	\$ 240,189	\$ 1,020,998
Cost of funds	624,033	236,127	860,160
Gross margin	156,776	4,062	160,838
Operating expenses	26,421	565	26,986
Loan loss provision	17,355	—	17,355
Net margin before extraordinary item	113,000	3,497	116,497
Extraordinary item	(1,164)	—	(1,164)
Net margin (1)	\$ 111,836	\$ 3,497	\$ 115,333

- b. FY 2000 as reported in the 2002 10K, FN 13, p. 98 -

“FY 2000” As Revised & Reported in FY 2002 10K

(Dollar amounts in thousands)	For the year ended May 31, 2000		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 780,809	\$ 240,189	\$ 1,020,998
Cost of funds	688,271	173,053	861,324
Gross margin	92,538	67,136	159,674
General and administrative expenses	21,256	5,730	26,986
Provision for loan losses	6,155	11,200	17,355
Net margin	\$ 65,127	\$ 50,206	\$ 115,333

- c. FY 2000 Comparison - \$3.5 Million as originally reported compared to \$50 Million, as revised. Neither figure comports to the \$27 Million reported by RTFC as income for FY 2000 in RTFC’s Audited Income Statement for FY 2001. (See paragraph 47 which sets forth RTFC’s audited financial statement for FYs 2000 and 2001)

- d. “FY 2001” as reported in the 2001 10K, FN 11, p. 78 -

“FY 2001” As Originally Reported

(Dollar amounts in thousands)	For the year ended May 31, 2001		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 968,771	\$ 419,524	\$ 1,388,295
Cost of funds	702,426	415,128	1,117,554
Gross margin	266,345	4,396	270,741
Operating expenses	31,907	579	32,486
Loan loss provision	105,204	—	105,204
Net margin before extraordinary item	129,234	3,817	133,051
Extraordinary item	(285)	—	(285)
Net margin (1)	\$ 128,949	\$ 3,817	\$ 132,766

- e. FY 2001 as reported in the 2002 10K, FN 13, p. 98 -

“FY 2001” As Revised & Reported in FY 2002 10K

(Dollar amounts in thousands)	For the year ended May 31, 2001		
	Electric Systems	Telecommunications Systems	Total Combined
Income statement:			
Operating income	\$ 968,771	\$ 419,524	\$ 1,388,295
Cost of funds	<u>804,384</u>	<u>313,455</u>	<u>1,117,839</u>
Gross margin	164,387	106,069	270,456
General and administrative expenses	23,790	8,696	32,486
Provision for loan losses	<u>74,404</u>	<u>30,800</u>	<u>105,204</u>
Net margin	\$ 66,193	\$ 66,573	\$ 132,766

f. FY 2001 Comparison - \$3.8 Million as originally reported compared to \$66.5 Million, as revised. Neither figure comports to the \$38.1 Million reported by RTFC as income for FY 2000 in RTFC’s Audited Income Statement for FY 2001. (See paragraph 47 which sets forth RTFC’s audited financial statement for FYs 2000 and 2001)

82. After RTFC commenced a foreclosure suit on June 1, 2004, for FY 2005 and later, CFC intentionally²¹ reverted to the same methodology of reporting RTFC profits as existed prior to changes in the Segment Reporting made in the FY 2002 10K. Thus, once CFC secured AA’s old auditor, Defendant Johnston, now located at Defendant Deloitte, CFC re-adopted AA’s methodology to report Segment Information to intentionally conceal RTFC’s actual contribution to CFC/RTFC income.

83. CFC’s Segment Reporting for FYs before FY 2002 and after FY 2004 (hereinafter the “**Segment Misreporting Methodology**”), is an intentional departure from Generally Accepted Accounting Principles (“GAAP”) intended to conceal the Embezzlement Scheme.

84. Financial Accounting Standards (“FAS”) No. 131, ¶ 3, provides that the objectives of Segment Reporting is to help users of financial statements: (i) better understand the enterprise's performance; (ii) better assess its prospects for future net cash flows; and (iii) make more informed judgments about the enterprise as a whole.

85. CFC’s **Segment Misreporting Methodology** intentionally renders meaningless the

²¹ This was after RTFC had commenced the retaliatory foreclosure against ICC.

objectives of FAS 131, a mandatory footnote. Showing RTFC's contribution at \$3.5 Million for FY 2000 and \$3.8 Million for FY 2001 is inexcusable and laughable.

86. CFC intentionally departs from FAS 131, ¶ 27(b), which requires "revenues from transactions with other operating segments of the same enterprise" by offsetting the Electric Loan Portfolio's actual interest expense with the sum of interest income accrued by CFC upon CFC loans to RTFC. Offsetting interest expense with the profit accrued on CFC loans to RTFC has the same force and effect as reporting the interest income – it inflates the gross margin of the Electric Loan Portfolio. Further, it is inconsistent with both -

a. The "**agency theory**" (the cooperative is conceived of as an agent, bailee, or trustee for the patrons, serving merely as a 'conduit' for their income which it does not own²²) and

b. the "**price adjustment theory**" (upon the theory that patronage dividends are in reality rebates on purchases or deferred payments on sales²³ allocated or distributed pursuant to a pre-existing obligation of the cooperative),

since Telephone Loan Portfolio's income belonging to RTFC is reported as Electric Loan Portfolio's income.

87. It is incongruent that under the *Segment Misreporting Methodology* Electric Loan Portfolio for FY 2000, as originally reported, is attributed with producing 97.47% of the FY 2000 CFC/RTFC Gross Margin (the Combined Gross Margin) when, pursuant to Footnote 2, the Telephone Loan Portfolio constitutes 22.18% of the Total Loan Portfolio and as of May 31, 2000 the Telephone Loan Portfolio is earning a weighted average interest of 84 basis points

²² In the case of a financing coop, the excess profit derived from the patrons' interest payments belong to the patron or patrons that made the interest payments.

²³ In the case of a financing coop, the patronage allocation is deemed an interest rate adjustment.

more than the weighted average interest of the Electric Loan Portfolio. Such discrepancies are inexplicable²⁴.

88. An analysis for FY 2001 further augments the conclusion that the *Segment Misreporting Methodology* misleads investors. It is incongruent that the Electric Loan Portfolio for FY 2001, as originally reported using the *Segment Misreporting Methodology*, is attributed with producing 98.38% of the FY 2001 CFC/RTFC Gross Margin (the Combined Gross Margin) when, pursuant to Footnote 2, the Telephone Loan Portfolio constitutes 27.05% of the Total Loan Portfolio and as of May 31, 2001 the Total Loan Portfolio was earning a weighted average interest of 141 basis points **more than** the weighted average interest of the Electric Loan Portfolio. Such discrepancies are inexplicable.

89. As to years after FY 2004, the 2005 10K, FN 15, p. 105, reports a gross margin of \$104 Million **for fiscal year 2005** with approximately \$89.8 Million or 90% of the FY 2005 Gross Margin attributable to the Electric Loan Portfolio (74.95% and 81.73% of the TLP [Total Loan Portfolio] as of the beginning and the end of the FY); approximately \$5.3 Million or 5% attributable of the FY 2005 Gross Margin to the Telephone Loan Portfolio (22.66% and 15.77% of the TLP as of the beginning and the end of the FY); and approximately \$9 Million or 8.65% of the FY 2005 Gross Margin attributable to the NCSC Loan Portfolio (2.39% and 2.5% of the TLP as of the beginning and the end of the FY). The reported result **is impossible** given that fact that as of May 31, 2004, based upon the information disclosed in FN 2 of the 2004 10K, the Electric Loan Portfolio, on a weighted average basis, had NO interest spread²⁵ and 88% of the Electric Loan Portfolio was invested in long-term loans. CFC changed its disclosure with respect to

²⁴ There is one explanation – fraud.

²⁵ As of May 31, 2004 the weighted average interest rate on the Electric Loan Portfolio was 4.41% and CFC's weighted average interest rate on debt (including the subordinated capital certificates) was 4.41%.

footnote 2 after FY 2004 so that it is now impossible to compute the weighted average interest rates of the loan portfolios: Electric Loan Portfolio, the Telephone Loan Portfolio, and NCSC Loan Portfolio.

90. CFC intentionally departs from FAS 131, ¶ 31(a), which requires “an enterprise shall disclose the ... [T]he basis of accounting for any transactions between reportable segments.” Nowhere does CFC make any disclosure that remotely addresses the basis of accounting that resulted in reporting Telephone Loan Portfolio profit as Electric Loan profit.

91. CFC’s *Segment Misreporting Methodology* is an intentional departure from GAAP to conceal the Embezzlement Scheme.

92. Financial Statements are legally presumed²⁶ to be misleading when there is a departure from GAAP. *17 C.F.R. § 210.4-01(a)(1)* provides that “Financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate ...”. This departure from GAAP is intentional and directly related to Embezzlement Scheme.

Embezzlement Scheme: Directly Related Accounting Fraud

The Single Entity Presentation

93. CFC improperly presents CFC and RTFC as a ‘single entity’ for purposes of intentionally concealing the Embezzlement Scheme from investors and RTFC members –

a. For fiscal years before FY 2004, CFC and RTFC were combined and Combined Financial Statements formed the basis of CFC’s public reporting.

b. For fiscal years after FY 2004, CFC and RTFC were consolidated and Consolidated Financial Statements formed the basis of CFC’s public reporting.

²⁶ While legal presumptions are helpful the embezzlement scheme is demonstrated with CFC’s own published financial statements.

94. The ‘single entity’ approach conceals the Embezzlement Scheme because CFC liabilities to RTFC and inter-coop transactions are not relevant when two separate and distinct entities are presented as one entity: accounting focuses upon reporting the ‘single entity’s’ results ignoring transactions between the two entities that comprise the reporting entity.

95. If CFC was presented as a stand-alone entity (as it should have been), liabilities and transactions by and between CFC and RTFC, including the allocation of patronage dividends are material and relevant subject to audit, validation and disclosure. In such a case, the liability that CFC should have been accruing for embezzling RTFC’s income is audited because, in a stand alone financial statement, it becomes material and relevant to presenting CFC’s stand-alone Financial Statements. This is especially so if CFC filed the financial statements with the SEC.

96. With respect to the ‘single entity’ presentation, CFC states:

- “The accompanying financial statements include the combined accounts of CFC and RTFC, **after elimination of all material intercompany accounts and transactions.**” (2001 10K, FN 1(b), p. 58 – Emphasis added)
- “The accompanying financial statements include the combined accounts of CFC and RTFC, **after elimination of all material intercompany accounts and transactions.**” (2002 10K, FN 1(b), p. 72 – Emphasis added)
- The accompanying financial statements, effective June 1, 2003, include the consolidated accounts of CFC, RTFC and NCSC and certain entities controlled by CFC created to hold foreclosed assets, **after elimination of all material intercompany accounts and transactions.** (2004 10K, FN 1(b), p. 100 – Emphasis added)

The statement “... after elimination of all material intercompany accounts and transactions” has been repeated over and over in every SEC filing that included financial statements.

97. Transaction by and between CFC and RTFC including the embezzlement of patron income is not relevant because of the ‘single entity’ presentation. Falsely presenting CFC and RTFC as a ‘single entity’ is essential to continuing and concealing the Embezzlement Scheme.

98. For FY before FY 2002, CFC justified the ‘single entity’ approach because “CFC has a \$1,000 membership interest in RTFC” and “CFC exercises control over RTFC through majority representation on their Boards of Directors.” (2001 10K, FN 1(b), p. 58) In fact, based upon the foregoing, CFC stated: “RTFC is a controlled affiliate of CFC.” (FY 2001 10K, FN 1(a), p. 58)

99. CFC’s voting control over RTFC **was an unlawful²⁷ voting arrangement**; yet, the voting arrangement improperly formed the accounting basis to present CFC/RTFC combined financial statements.

100. It is a departure from GAAP for CFC to use an unlawful voting arrangement as the basis for presenting CFC and RTFC as a ‘single entity.’ The Statements on Auditing Standards states:

If the auditor concludes that an illegal act has a material effect on the financial statements, and the act has not been properly accounted for or disclosed, the auditor should express a qualified opinion or an adverse opinion on the financial statements taken as a whole, depending on the materiality of the effect on the financial statements. *See AU §317.18*

The ‘single entity’ presentation has a material effect because it conceals the Embezzlement Scheme under guise of the ‘single entity’ presentation premised upon a patently unlawful voting

²⁷ SDCL § 47-16-10 (RTFC was then a South Dakota coop) codifies the one-member, one-vote coop principle (known as democratic control).

arrangement.

101. Additional Accounting literature, *Statement Financial Accounting Concepts No. 1, Objectives of Financial Reporting by Business Enterprises*, states in the summary the following concepts: (i) Financial reporting is not an end in itself but is intended to provide information that is useful in making business and economic decisions; (ii) The objectives of financial reporting are not immutable—they are affected by the economic, legal, political, and social environment in which financial reporting takes place; (iii) Financial reporting should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions; and (iv) “Investors” and “creditors” are used broadly and include not only those who have or contemplate having a claim to enterprise resources but also those who advise or represent them.

102. There is NO justification for single entity when the underlying presumption²⁸ supporting the single entity presentation, that (i) “consolidated statements are more meaningful than separate statements” and (ii) consolidated statements “are usually necessary for a fair presentation”, is absent. In fact, in this case there is a simple choice:

- a. reveal the Embezzlement Scheme by providing CFC stand-alone Financial Statements; or
- b. present CFC and RTFC as a ‘single entity’ to conceal the Embezzlement Scheme.

CFC elected to conceal.

103. The ‘single entity’ presentation was a material departure from GAAP for all fiscal years before FY 2002. It was and is intentional and directly related to concealing the

²⁸ Accounting Research Bulletin 51 (“ARB No. 51”), Consolidation, Par. 1, Purpose of Consolidated Statements.

Embezzlement Scheme.

104. With new auditors for FY 2002, the unlawful voting control over RTFC by CFC was eliminated.

In September 2001, the CFC and RTFC boards of directors approved changes in the governance of RTFC and on October 9, 2001, RTFC received consents from a majority of its members, making the changes effective. CFC is not a member of RTFC and does not elect directors to the RTFC board. In October 2001, RTFC refunded the \$1,000 membership interest to CFC. (2002 10K, FN 1(b), p. 72)

With no voting²⁹ control there is NO accounting authority whatsoever for presenting CFC and RTFC as a ‘single entity’ for FY 2003 and 2004.

105. Nevertheless CFC continued³⁰ the ‘single entity’ presentation stating:

CFC is the sole lender to and manages the affairs of RTFC through a long-term management agreement. All amounts borrowed from CFC may be accelerated if RTFC obtains financing from another source. **Under a guarantee agreement, CFC maintains a loan loss reserve for RTFC.** Six members of the CFC board serve as a loan advisory committee to the RTFC board. All loans that require RTFC board approval also require the approval of the CFC loan advisory committee. (2002 10K, FN 1(b), p. 72) (Emphasis added)

While the Enron debacle had sparked a lively debate about off-balance sheet entities (Enron’s Financial Statements were GAAP compliant) there was NO accounting authority to support the combination of CFC and RTFC without common ownership and/or voting control for FYs 2002 and 2004.

106. Without common ownership, combining CFC and RTFC to present CFC/RTFC as a ‘single entity’ for FYs 2002 and 2003 is a material departure from GAAP intended to conceal the Embezzlement Scheme.

107. For FY 2004 and later, CFC **consolidated** CFC with RTFC to continue the ‘single

²⁹ CFC’s previous ownership interest of \$1,000 was never relevant for purposes of decisions with respect to presenting CFC and RTFC as a ‘single entity’ since it is immaterial.

³⁰ CFC had to continue the presentation to avoid disclosing the embezzlement scheme - Ernst knew the same.

entity' presentation claiming:

As a result of adopting Financial Accounting Standards Board ("FASB") Interpretation No. ("FIN") 46(r), Consolidation of Variable Interest Entities, an interpretation of Accounting Research Bulletin No. 51, effective June 1, 2003, CFC consolidates the financial results of RTFC and NCSC. CFC is the primary beneficiary of variable interests in RTFC and NCSC due to its exposure to absorbing the majority of expected losses. (2004 10K, FN 1(b), p. 100-101)

The CFC guarantee to RTFC against losses (entered into at the same time CFC's surrendered its unlawful voting arrangement) and which improperly served as the basis for issuing Combined Financial Statements for FYs 2002 and 2003, after FY 2003 served as CFC's excuse to continue the 'single entity' presentation for fiscal years after FY 2003.

108. The purpose of FIN 46(r) was to address the Enron problem: off-balance sheet entities which did not qualify for presentation as a 'single entity' because of the lack of voting control or majority common ownership. **Ironically**, an accounting interpretation meant to prevent fraud serves as CFC's basis to continue the 'single entity' presentation and continue a fraud by using the 'single entity' presentation to conceal the Embezzlement Scheme.

109. In reality RTFC is not an off-balance sheet activity of CFC: (i) all RTFC loans are funded by CFC loans which, therefore, are clearly reflected on CFC's books; and (ii) all investments of RTFC members (unredeemed patronage dividends, subordinated capital certificates, etc.) are match funded by RTFC as investments in CFC (unredeemed patronage dividends, capital term certificates, etc.). In fact, all RTFC cash activities are transacted by CFC and are merely allocated to RTFC. RTFC has had a bank account that has had a \$30,000 balance forever.

110. In substance, CFC's **guarantee³¹ is illusory** for each of the following reasons:

³¹ The basis for the single entity presentation.

- a. If CFC equity was reconciled for CFC's failure to recognize loan losses and adjusted for the Embezzlement Scheme, CFC was bankrupt both on a fair value basis and upon a historical accounting basis;
- b. In 2004, at the time consolidation, the Electric Loan Portfolio and thus CFC was being supported³² by the earnings of the Telephone Loan Portfolio (by 2004 RTFC had become the cornerstone of CFC's profitability);
- c. RTFC, not CFC, had the legal entitlement to the income produced by RTFC loans to Telephone Members since such entitlement is embedded in the nature of coops under either the agency theory or price adjustment theory; and
- d. Further, even considering the members' subordinate capital certificates, RTFC, as of FY 2004 year-end, was substantially better capitalized, capitalized on better financial terms³³ (lower cost of capital), and had a loan portfolio with a novel concept to CFC: a positive interest spread.

RTFC, not CFC, was the financial cornerstone of the fictional CFC/RTFC 'single entity'.

111. In FY 2004 (the year FIN 46(r) was first applied), CFC existed only because of a combination of three factors:

- a. the Telephone Loan Profitability;
- b. equity reported as CFCs' equity that rightfully belonged to RTFC; and
- c. fraudulent reporting of loan losses.

³² Based upon Footnote 2, the Electric Loan Portfolio as of May 31, 2004 had a weighted average interest rate of 4.41% and CFC had a cost of funds of 4.41%: there was not even a '1' basis point spread.

³³ RTFC had \$401 Million of interest free Capital Term Certificate investments in CFC. While CFC reported total membership subordinated certificates of \$1,665 Million at 2.69%, removal of RTFC certificates and unissued certificates results in **membership subordinated certificates of \$1,134 Million at 3.93%**. The 3.93% is more expensive than CFC's short-term debt and pays a higher rate than Electric Cos. Pay on long-term variable rate loans (2.63%), intermediate-term secured loans (2.5%), intermediate-term unsecured loans (2.56%), and lines of credit loans (2.50%).

112. As set forth in this complaint in the section describing the CoServ loan loss, if reported correctly (in accord with GAAP) and not fraudulently, CFC had no equity (loan loss would have wiped out even embezzled equity) and from the date forward CFC's/RTFC's (the 'single entity') earnings were entirely dependent upon RTFC (the Telephone Loan Portfolio) earnings.

113. FIN 46(r) does not support the consolidation of CFC and RTFC and considering the history and apparent purpose of the 'single entity' presentation, FIN 46(r) was not applicable and did not support reporting CFC and RTFC as a 'single entity.'

114. Presenting CFC and RTFC as a 'single entity' is a material departure³⁴ from GAAP intended to conceal and disguise the Embezzlement Scheme.

115. Financial Statements are legally presumed to be misleading when there is a departure from GAAP. *17 C.F.R. § 210.4-01(a)(1)* provides that "Financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate ...". This departure from GAAP is intentional and directly related to Embezzlement Scheme.

Embezzlement Scheme: Directly Related Accounting Fraud

The Fair Value Disclosure

116. Proper reporting of CFC's Fair Value on members' loans would have –

a. Drawn attention to CFC's Electric Loan Portfolio which had little or no interest spread;

b. Drawn attention to the Telephone Loan Portfolio which provided all of CFC's interest spread; and

³⁴ Effectively masks liabilities that overshadow the 5% materiality standard of 17 CFR Part 211, Subpart B, SAB 99, 64 FR 45150.

c. Ultimately drawn attention to the Embezzlement Scheme.

117. CFC is and has been insolvent on a Fair Value basis as a result of the very low margins³⁵ on the Electric Loan Portfolio because of financial reliance upon the Embezzlement Scheme.

118. The Fair Value footnote is mandated by GAAP, FAS 107, and has been a required disclosure since CFC's FY 1996.

119. CFC's departure from GAAP, FAS 107, with respect to Fair Value disclosures, renders the mandated footnote a nullity: a material departure from GAAP.

120. Financial Statements are legally presumed to be misleading when there is a departure from GAAP. *17 C.F.R. § 210.4-01(a)(1)* provides that "Financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate ...". This departure from GAAP is intentional and directly related to Embezzlement Scheme.

121. Taking CFC's disclosures as made, CFC is insolvent on a Fair Value basis:

a. FYs 2009 & 2008

(in thousands)	31-May-09			31-May-08		
	Carrying Value	Fair Value		Carrying Value	Fair Value	
<i>Equity as reported</i>			508,938			665,965
<i>Assets:</i>						
Cash & cash equiv.	504,999	504,999	-	177,809	177,809	-
Restricted Cash	8,207	8,207	-	14,460	14,460	-
Invest. – Pref. Stk	47,000	47,000				
Loans to members, net	19,569,349	18,766,573	(802,776)	18,514,134	17,659,808	(854,326)
Debt service res. funds	46,662	46,662	-	54,993	54,993	-
Interest rate exch. agrs.	381,356	381,356	-	220,514	220,514	-
<i>Liabilities:</i>						

³⁵ CFC portrays and represents that the low margins are due to its tax-exempt status; however, since CFC annually allocates (and can distribute) earnings to CFC's members, higher interest, commercially reasonable interest rates, do not materially alter the effective interest rates charged to the members and insures CFC is operated on a commercial basis.

Short-term debt	4,867,864	4,885,919	(18,055)	6,327,453	6,334,426	(6,973)
Long-term debt	12,720,055	13,160,498	(440,443)	10,173,587	10,548,133	(374,546)
Guarantee liability	29,672	33,181	(3,509)	15,034	15,034	-
Int. rate exch. agrs.	493,002	493,002	-	171,390	171,390	-
Sub. deferrable debt	311,440	274,759	36,681	311,440	291,551	19,889
Off-bal. sheet instr.:	-	-	-	-	-	-

Fair Value Equity

(719,164)³⁶

(549,991)

Source: 2009 10K FN 15 Page 126 2008 10K FN 14 Page 112

If one makes the calculations that CFC does not make or comment upon, CFC is under water for both fiscal years – 2008 and 2009.

b. FYs 2007 & 2006

(in thousands)	31-May-07			31-May-06		
	Carrying Value	Fair Value		Carrying Value	Fair Value	
<i>Equity as reported</i>			710,041			784,408
<i>Assets:</i>						
Cash & cash equivalents	304,107	304,107	-	260,338	260,338	-
Restricted Cash	2,032	2,032	-			
Loans to members, net	17,566,544	15,743,632	(1,822,912)	17,749,462	15,055,729	(2,693,733)
Debt service reserve funds	54,993	54,993	-	80,159	80,159	-
Interest rate exch. agrs.	212,143	212,143	-	320,201	320,201	-
Cross-curr. int. rate agrs.	-	-	-	22,226	22,226	-
F. V. int. rate exch. agrs.	10,631	10,631	-	-	-	-
Cross curr. int. rate agrs.	-	-	-	233,242	233,242	-
<i>Liabilities:</i>						
Short-term debt	4,427,123	4,404,590	22,533	5,343,824	5,339,759	4,065
Long-term debt	11,295,219	11,492,645	(197,426)	10,642,028	10,725,849	(83,821)
Guarantee liability	18,929	18,929	-	16,750	16,750	-
C. F. int. rate exch. agrs.	12,869	12,869	-	6,844	6,844	-

³⁶ Bracketed numbers equal negative numbers.

Interest rate exch. Agrs.	59,065	59,065	-	78,354	78,354	-
Sub. deferrable debt	311,440	299,964	11,476	486,440	462,741	23,699
						-
Off-balance sheet instr.	-	-	-	-	-	-
<i>Fair Value Equity</i>			<u>(1,276,288)</u>			<u>(1,965,382)</u>
Source	2007 10K	FN 14	Page 111	2007 10K	FN 14	Page 111

Again, if one makes the calculations that CFC does not make or comment upon, CFC is under water for both fiscal years – 2008 and 2009.

122. Based upon the foregoing, using CFC’s numbers, CFC was insolvent on a Fair Value basis –

- a. with negative equity of nearly \$2 Billion in FY 2006;
- b. negative equity of nearly \$1.3 Billion in FY 2007;
- c. negative equity of nearly \$550 Million in FY 2008; and
- d. negative equity of over \$719 Million in FY 2009.

123. The Fair Value equity deficiency (the “Fair Value Deficiency”) in members’ loans is nearly totally attributable to the Electric Loan Portfolio. CFC reported a Fair Value Deficiency related to members’ loans of the Total Loan Portfolio (“TLP”) of:

- a. \$1,629 Million for FY 2004 while RTFC individual Financial Statements reported for FY 2004 a Fair Value Deficiency³⁷ of \$54.3 Million when RTFC represented 22.66% of the Total Loan Portfolio;
- b. \$382 Million for FY 2003 while RTFC individual Financial Statements reported for FY 2003 a Fair Value Surplus³⁸ of \$261 Million when RTFC represented 25.37% of the Total Loan Portfolio;

³⁷ Thus, over \$1.57 Billion of the deficiency was attributable the Electric Loan Portfolio.

³⁸ Meaning the Electric Loan Portfolio had a deficiency of \$643 Million.

c. \$1,011 Million for FY 2002 while RTFC individual Financial Statements reported for FY 2002 a Fair Value Surplus of \$23 Million for FY 2002 when RTFC represented 25.32% of the Total Loan Portfolio; and

d. \$1,177 Million for FY 2001 while RTFC individual Financial Statements reported for FY 2001 a Fair Value Surplus of \$22.7 Million when RTFC represented 27.05% of the Total Loan Portfolio.

Thus, RTFC added little to the Fair Value Deficiency in FY 2004 and offset the Fair Value Deficiency in the Electric Loan Portfolio for FYs 2003, 2002 and 2001.

124. The Fair Value Deficiency is and has been understated because of CFC's material departure from GAAP. FAS 107, ¶ 5, states:

For purposes of this Statement, the fair value of a financial instrument is the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale. If a quoted market price is available for an instrument, the fair value to be disclosed for that instrument is the product of the number of trading units of the instrument times that market price.

GAAP requires financial instruments to be recorded at **market value**.

125. CFC uses its own internal lending rate (rather than market rates) as of the applicable year-end to calculate Fair Value. For instance, the 2006 10K, FN 13, p. 76, states:

Fair values are estimated by discounting the future cash flows using the current rates at which similar loans would be made [by CFC] to borrowers with similar credit ratings and for the same remaining maturities.

The above statement or equivocal statements are made in each annual CFC Financial Statement.

126. By its own admission, CFC's rates are not market rates. CFC's 2006 10K, p. 5, states:

The Company's primary objective as a cooperative is to provide its members with the lowest possible loan and guarantee rates while maintaining sound financial results required to obtain high credit ratings on its debt instruments. Therefore, the Company

marks up its funding costs only to the extent necessary to cover its operating expenses, a provision for loan losses and to provide a margin sufficient to preserve interest coverage in light of the Company's financing objectives.

The above statement or equivocal statements are made in each annual 10K.

127. The difference by and between the CFC interest rates used to discount the TLP³⁹ and market rates, especially considering the makeup of the loan portfolio (FY 2006 had over \$12 Billion in long-term⁴⁰, fixed rate loans), means the Fair Value Deficiency is understated, upon information and belief, by at least \$1 Billion which sum is material.

128. Departing from FAS 107 with respect to members' loans renders meaningless and otherwise nullifies all the Fair Value disclosures since members' loans constitute over ninety percent (90%) of CFC's assets and over 95% of the assets which are not already reported on a Fair Value basis.

129. CFC's presentation of Fair Value is a material⁴¹ departure from GAAP. Financial Statements are legally presumed to be misleading when there is a departure from GAAP. *17 C.F.R. § 210.4-01(a)(1)* provides that "Financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate ...". This departure from GAAP is intentional and directly related to Embezzlement Scheme.

CFC's Loan Loss Fraud

130. CFC margins are so razor thin that CFC cannot afford catastrophic loan losses; therefore CFC commits loan loss fraud.

131. CFC has experienced two known catastrophic loan losses: Denton County Electric Cooperative, Inc. ("CoServ") and Innovative Communication Corporation ("ICC").

³⁹ "TLP" means total loan portfolio.

⁴⁰ Long-term Electric loans are usually for 30 to 35 years.

⁴¹ Easily exceeds the 5% threshold of 17 CFR Part 211, Subpart B, SAB 99, 64 FR 45150.

The CoServ Loan Loss Fraud.

132. CoServ emerged from a bankruptcy reorganized in CFC's fiscal year 2003. From CFC's 11/30/2002 10Q the following is deduced about the CoServ reorganization:

CoServ Loan Balance as of May 31, 2001		1,003
Fair Value of Foreclosed Assets		
Notes Receivable (FN 4, 11/30/02 10Q)	289	
Real Estate (FN 4, 11/30/02 10Q)	36	
Telecom Equip. (FN 11(d), 11/30/02 10Q)	27	
Lock Box Cash (FN 11(d), 11/30/02 10Q)	<u>27</u>	
Assets Received by CFC		<u>(379)</u>
Subtotal/loan balance after asset offset		624
CFC's Investment or cost in the CoServ's Reorganization Plan		<u>28</u>
CoServ's 11/30/2002 Loan Balance (FN 11(d) of the 10Q)		<u>652</u>

The \$28 Million is a plug figure representing CFC's investment to fund CoServ's reorganization.

133. The primary difference between the reporting in CFC's 10Q for the Q/E 11/30/2002 and CFC's 10K for FY 2003, is that telecommunications assets that were reported as \$27 million suddenly became worth \$39 Million (a \$12 Million increase). Upon information and belief, the adjustment in the reported value of the telecommunications equipment value represented some of the additional CFC investment in CoServ made by CFC to **underwrite CoServ's reorganization plan.**

134. At the time of CoServ's bankruptcy, **CFC had loans of \$262 Million or more to CoServ directly related to the Telecom business** and Telecom assets – assets worth \$28 Million. Page 16 of the Joint Disclosure Statement⁴² describes:

- a. Telecom Note 1 for \$42,000,000;
- b. Telecom Note 2 for \$110,000,000; and

⁴² Forth Worth division of the North Texas Bankruptcy Court, case no. 02-04665

c. Telecom Note 3 for \$110,000,000.

The foregoing totals \$262 Million.

135. The above number (another \$262 Million) is further confirmed in CFC's November 27, 2002 Motion to Enforce Telecom Plan in which CFC averred as follows in paragraph 9:

9. On the Petition Dates, Electric and its Affiliates were indebted to CFC in an amount exceeding \$1 Billion. Telecom alone directly owed in excess of \$262,000,000 and guaranteed the entire indebtedness set forth above. The CoServ Telecom entities did not generate enough cash flow to cover operating and capital expenses, let alone to service their debt and provide a return on their investment. Accordingly, on November 30, 2001, Telecom and their Affiliates filed for protection under Chapter 11 of the Bankruptcy Code. Shortly thereafter, on February 1, 2002, CoServ Electric, CoServ Realty and their Affiliates also filed for protection from creditors under Chapter 11 of the Bankruptcy Code.

136. In CFC's November 27, 2002 Motion to Enforce Telecom Plan with the Bankruptcy Court, in paragraph 16 thereof, CFC pleaded:

Debtors could not sell the Telecom Assets. Therefore, CFC incorporated DTP as the entity to whom the Telecom Assets would be transferred. In addition to taking over the business, **CFC committed to paying up to \$6.5 million of Telecom's outstanding unsecured indebtedness to creditors.** While Telecom is directly indebted to CFC in excess of \$262 million, **the parties agree that the Telecom Assets are valued at only \$28 million.** These are substantial financial commitments and they are the only financial commitments to which CFC agreed regarding Telecom. (Emphasis added)

In a CFC Motion filed in bankruptcy court, CFC admits that the Telecom Assets had an agreed value of \$28 Million. Considering the \$6.5 Million to be assumed at closing (assuming it was not a greater sum when actually closed), CFC, through CoServ, had an investment of \$268.5 Million

in Telecom assets worth \$28 Million.

137. Upon information and belief, CFC had to **directly**⁴³ advance nearly \$40 Million (\$28 Million as of 11/30/02 and another \$12 Million) to fund CoServ's emergence from bankruptcy. CFC intentionally omits any disclosure of this fact and played with the value of CoServ's Assets received in foreclosure to conceal CFC's investment in CoServ.

138. CFC **did not recognize any loan loss** in conjunction to the CoServ reorganization because CFC adjusted the value of foreclosed assets and instead, reported:

- a. the CoServ loan at a bloated balance of \$652 Million; and
- b. foreclosed assets at a bloated balance of \$369 Million (2003 10K, FN 3, p. 89).

139. Inexplicably, CFC did not recognize any loss with respect to the CoServ reorganization even though CFC telecommunications investment exceeded \$268.5 Million with a \$240.5 Million loss (\$268.5 less \$28 Million value).

140. CoServ's reorganization plan (the "Plan") reported to the Bankruptcy Court and other interested parties in the Joint Disclosure Statement that CoServ's obligation to CFC due upon the emergence from bankruptcy **at \$ 361,913,434** as of December 31, 2002 – a \$290 Million discrepancy from CFC's \$652 Million loan balance.

141. On page 2 of Exhibit C, CoServ's Financial Forecast, to the Joint Disclosure Statement, proved the following financial information with respect to CoServ's obligation to CFC for calendar years 2002 through 2011, inclusive:

- a. Calendar years 2002 thru 2005

Denton Cty Elect. Coop. ("CoServ")	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
NPV Balance - End of the year	361,913,434	361,899,291	361,884,194	361,868,077
Principal Changes	78,539,176	(14,143)	(15,097)	(16,116)

⁴³ CFC's investment to fund the CoServ reorganization included indirect advances.

Interest capitalized/accrued	(20,662,558)	24,429,157	24,428,202	24,427,183
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b. Calendar years 2006 thru 2008

Denton Cty Elect. Coop. ("CoServ")	<u>2006</u>	<u>2007</u>	<u>2008</u>
NPV Balance - End of the year	361,850,873	361,832,507	357,826,242
Principal Changes	(17,204)	(18,366)	(4,006,266)
Interest capitalized/accrued	24,426,095	24,424,934	24,423,694

c. Calendar years 2009 thru 2011

Denton Cty Elect. Coop. ("CoServ")	<u>2009</u>	<u>2010</u>	<u>2011</u>
NPV Balance - End of the year	353,549,553	348,934,188	344,110,661
Principal Changes	(4,276,689)	(4,565,385)	(4,873,527)
Interest capitalized/accrued	24,153,271	23,884,595	23,556,433

The above is hereinafter referred to as the "CoServ/CFC Loan Amortization Schedule".

142. The CoServ/CFC Loan Amortization Schedule reflected the following:

- a. The annual interest rate reflected on the outstanding loan balances throughout period, calendar years 2003 through 2011, was 6.75%;
- b. Using the largest principal payment to be made before calendar year 2008, \$18,366, it would have **required over 19,000 years** for the complete amortization of the CoServ Loan Balance of **less than \$362 Million** (or over 34,000 years to amortized \$652 Million); and
- c. Using the largest principal payment to be made (calendar year 2011 – 9 years after emerging from bankruptcy), \$4,823,527, CoServ would have required **over 75 years** for the complete amortization of the CoServ Loan Balance of **less than \$362 Million** (or over 135 years to amortized \$652 Million).

The CoServ Loan was back-end loaded and there is little principal amortization during the first

10 years of a thirty-five (35) year loan⁴⁴ that was reported in the Joint Disclosure Statement at \$363 Million; nevertheless, CFC reported the same loan at \$652 Million.

143. CFC was a co-sponsor of the CoServ Reorganization plan. As a sponsor, the financial forecast included in the Joint Disclosure Statement was CFC's financial forecast as well as CoServ's financial forecast. The Joint Disclosure Statement was submitted to the Bankruptcy Court and thus subject to all provisions regarding the veracity of the statements⁴⁵ therein.

144. After the CoServ Reorganization, CFC recorded the forgoing CoServ Loan Balance at \$652 Million in the 10Q for Q/E 11/30/2002. That is a **\$290 Million overstatement**⁴⁶ from the principal balance of the CoServ/CFC Loan Amortization Schedule.

145. GAAP, FAS 114 as modified by FAS 118, requires that CFC record the CoServ loan at the net present value of all future payments using the historical lending rate -

FAS 114, ¶ 42, states that "The Board concluded that a loan that becomes impaired should continue to be carried at an amount that considers **the present value of all expected future cash flows**"

FAS 114, ¶ 14, states that the "effective interest rate for a loan restructured in a troubled debt restructuring is based on the original contractual rate, not the rate specified in the restructuring agreement."

FAS 118, ¶ 6, states that "For a loan that has been restructured in a troubled debt restructuring, ***the contractual terms of the loan agreement*** refers to the contractual terms specified by **the original loan agreement**, not the contractual terms specified by the restructuring agreement.

Accounting allows CFC to use the interest rates before the Master Restructuring Agreement executed March 15, 2001.

⁴⁴ Nevertheless, that did stop CFC from valuing the loan at \$652 Million when the NPV using a 6.75% interest rate was less than \$362 Million.

⁴⁵ As was the SEC filings. CFC reports two figures for the same loan both under racketeering penalties.

⁴⁶ Which figure approximates the \$240 Million loss on the Telecommunication assets and the \$40 Million CFC investment to fund the CoServ reorganization.

146. CFC's weighted average interest rates earned on long-term, fixed-rate Electric loans was –

- a. 7.02% for FY 1998 (1999 10K, p. 63);
- b. 6.69% for FY 1999 (1999 10K, p. 63);
- c. 6.74% for FY 2000 (2001 10K, p. 62); and
- d. 6.85% for FY 2001 (2001 10K, p. 62).

For both FYs 2000 and 2001 (CoServ was placed on non-accrual basis as of January 1, 2001), the lowest⁴⁷ rate of interest charged by CFC was the rate for long-term, fixed-rate loans.

147. The discount rate of 6.75% used in the CoServ/CFC Loan Amortization Schedule is supportable⁴⁸. Further, CFC has no loans that are so back-end loaded allowing a 19,000 year amortization schedule for the first 5 years using \$362 Million as the loan balance (or 34,000 years if the \$652 Million Loan Balance is used) and 75 year amortization for the next 5 years using \$362 Million as the loan balance (or 135 years if the \$652 Million Loan Balance is used).

148. Upon information and belief, by and between the overvaluation of foreclosed assets (the \$370 Million offset to the CoServ Loan), the cash invested by CFC to consummate the CoServ reorganization plan, and loan loss omitted by overvaluing the CoServ Loan, **CFC experienced at least a \$390 Million unreported loan loss on the CoServ loan that, pursuant to GAAP, should have been recognized in FY 2003.**

149. CoServ has made every Financial Statement since and including the 10Q for the

⁴⁷ For example, in FY 2001 long-term variable rate loans were charged 7.05% and line of credit loans were charged 7.35%. Weighed average interest rates on the performing Electric Loan Portfolio, excluding RUS guaranteed loans, was 6.99% for FY 2001 and 7.08% for FY 2000.

⁴⁸ The provisions of FAS 114 permit a creditor to use the interest rate before any restructuring. CFC had a private restructuring which was followed by bankruptcy restructuring. While CFC charged lower rates on line of credit loans and CoServ had long-term as well as line of credit loans; the restructuring agreement is a backend loaded 35-year loan and therefore, the rates on CFC's long-term loans are appropriate for discounting. None of CFC's other loans were so back-end loaded.

Q/E 11/30/2002 materially misleading by

- a. overstating equity to the extent CFC carried a bloated (inflated) CoServ loan balance;
- b. overstating equity to the extent CFC carried foreclosed assets at a bloated (inflated) balance;
- c. overstating earnings in FY 2003 because, in a departure from GAAP, CFC did not recognize the CoServ Loan Loss by burying loan loss in a bloated loan balance as well as bloated fair values for foreclosed assets; and
- d. understating earnings each quarter after the Q/E 11/30/2002 by not reporting actual interest received on the CoServ loan because CFC is using the interest to amortize the CoServ Loan Loss.

The sums involve each year immensely overshadow the minimal threshold of materiality as established by the SEC. *See* 17 CFR Part 211, Subpart B, SAB⁴⁹ 99, 64 FR 45150.

150. CoServ **amortizes** the CoServ Loan Loss by several steps:

- a. First, CFC carries the CoServ loan on nonaccrual so that CFC does not recognize interest income on the CoServ loan; and
- b. Secondly, actual interest paid on the CoServ loan is charged (rather than reporting it as interest income) directly to the CoServ bloated loan balance.

As stated, this intentionally understates CFC's income in the current period in order to amortize a loan loss that should have been recognized in an earlier period.

151. The FY 2009 10K, p. 38, states "All restructured CoServ loans have been on non-accrual status since January 1, 2001." Similar statements have been made in every 10K and 10Q since the Q/E 11/30/2002.

⁴⁹ Staff (SEC) Accounting Bulletin

152. The following table sets forth the yearend balance from CoServ/CFC Loan Amortization Schedule; the November 30th balance reported in CFC's second quarter 10Q (for q/e 11/30), and the difference.

Calendar Year -	CFC's <u>Nov. 30th</u>	CoServ Sch. <u>Year-end</u>	<u>Difference</u>
2002	652,000,000	361,913,434	290,086,566
2003	624,000,000	361,899,291	262,100,709
2004	606,000,000	361,884,194	244,115,806
2005	581,000,000	361,868,077	219,131,923
2006	557,000,000	361,850,873	195,149,127
2007	532,000,000	361,832,507	170,167,493
2008	505,000,000	357,826,242	147,173,758 ⁵⁰

The sums in the column titled "Difference" represent the approximate sum that the CoServ Loan Balance was overstated (the "Overstatement") as of November 30th of the relevant year. The Overstatement is limited to the overstatement of the CoServ Loan Balance and does not include the overstatement of the book values of the foreclosed assets.

153. The following table compares the Overstatement from the foregoing table to the November 30th equity adjusted to remove fair value adjustments to derivative and foreign exchange agreements (which CFC uses) which figure is set forth in the Non-GAAP Financial Measures of each 10Q.

Calendar Year -	Overstatement/ <u>Difference</u>	Nov 30th <u>Adj. Equity</u>	Actual <u>Equity</u>	Overstatement <u>Percentage</u>
2002	290,086,566	385,000,000	94,913,434	305.63%
2003	262,100,709	409,666,000	147,565,291	177.62%
2004	244,115,806	474,341,000	230,225,194	106.03%
2005	219,131,923	528,248,000	309,116,077	70.89%
2006	195,149,127	492,097,000	296,947,873	65.72%
2007	170,167,493	536,044,000	365,876,507	46.51%
2008	147,173,758	443,703,000	296,529,242	49.63%

The Overstatement and the Overstatement Percentage does not reflect the amount of loss not

⁵⁰ This sum means that CFC's equity is materially overstatement.

recognized on the foreclosed assets taken as a result of the CoServ reorganization.

154. The following CoServ published financial statement (on a calendar year basis) confirms that CoServ carries the CFC loans at substantially lesser amounts than the same loan is carried by CFC.

BALANCE SHEET DATA	2006	2007	2008
Cash and Temporary Investments	\$ 27,613,478	\$ 24,255,459	\$ 19,136,512
Accounts Receivable - net of allowance for uncollectibles	\$ 13,924,793	\$ 18,868,815	\$ 22,086,009
Other Current Assets	\$ 17,292,239	\$ 23,113,842	\$ 24,543,424
Investments in Affiliates	\$ 57,009,729	\$ 55,235,041	\$ 58,535,200
Investments in Associated Organizations	\$ 25,102,929	\$ 35,494,042	\$ 39,766,569
Other Assets	\$ 946,416	\$ 2,270,135	\$ 1,068,329
Total Current and Other Assets	\$ 141,889,584	\$ 159,237,334	\$ 165,136,043
Property, Plant and Equipment - Net of Depreciation	\$ 427,698,105	\$ 453,563,633	\$ 485,028,705
Total Assets	\$ 569,587,689	\$ 612,800,967	\$ 650,164,748
Patronage Capital	\$ 83,620,877	\$ 107,120,890	\$ 111,792,808
Memberships	\$ 1,620,985	\$ 1,750,495	\$ 1,847,915
Other Equity	\$ 65,763,774	\$ 72,273,743	\$ 91,209,266
Total Equity	\$ 151,005,636	\$ 181,145,128	\$ 204,849,989
Accounts Payable	\$ 27,302,492	\$ 35,219,900	\$ 39,670,665
Customer Deposits	\$ 4,793,704	\$ 5,616,687	\$ 6,488,745
Other Current Liabilities	\$ 18,024,746	\$ 25,152,002	\$ 35,926,928
Notes Payable	\$ 361,072,283	\$ 358,475,621	\$ 354,822,531
Other Liabilities	\$ 7,388,828	\$ 7,191,629	\$ 8,405,890
Total Liabilities	\$ 418,582,053	\$ 431,655,839	\$ 445,314,759
Total Equity and Liabilities	\$ 569,587,689	\$ 612,800,967	\$ 650,164,748

The “Notes Payable” of \$354,822,532 as of December 31, 2008 reflected by CoServ includes the amount due CFC on the restructured loan note; the additional \$20 Million CFC loaned CoServ after the restructuring; and, upon information and belief, additional sums borrowed from and due CoBank related to loans made by CoBank since the restructuring. In CoServ’s Operations

Update in CoServ's 2007 Annual Report, CoServ announced a new \$50 Million loan agreement with CoBank for capital improvements.

155. Upon information and belief, the CoServ Loan Loss of \$390 Million if properly reported by CFC would have wiped out CFC's equity in FY 2003 and would have resulted in CFC financial collapse.

156. CFC's 2003 10K, FN 3, p. 89, included the following table summarizing the assets received in the CoServ reorganization:

CFC accounts for these assets on the combined balance sheets as foreclosed assets and recorded these assets at their fair value at the time of transfer.

(Dollar amounts in thousands)	Foreclosed Assets
Original recorded fair value	\$ 369,393
Results of operations	1,249
Net cash received	(15,377)
Impairment to fair value write down	(19,689)
Ending balance of foreclosed assets	<u>\$ 335,576</u>

157. Evidence of CFC's overvaluing the CoServ assets include, but is not limited to, the following:

a. CFC reported three different values for Telecom Assets; (i) \$27 Million in the 11/30/2003 10Q; (ii) \$39 Million in the FY 2003 10K, and (iii) \$28 Million in a Motion in which CFC to enforce the Telecom agreement (where CFC stated under racketeering penalties the Telecom assets value was \$28 Million as agreed by CoServ and CFC).

b. To date, total market impairments recognized (losses booked) by CFC on the CoServ foreclosed assets from the 10Q for the Q/E 11/30/2002 through FY 2009 a sum of over \$44,375,000 (\$19.7 Million recognized in the 1st FY). The foreclosed assets were primarily real estate developer's notes. Real estate from FY 2003 through FY 2008

(May 31, 2008) has experienced an unprecedented rise in market values of real estate⁵¹ (while CFC is in fact recognizing impairment). Furthermore, CFC has never reported disposing of the real estate at a gain.

c. In CFC's 10Q for the Q/E 11/30/2002, p, 21, CFC stated "The majority of the developer notes mature over the next 3 years" even though is still (after \$44 Million of impairment recognition and nearly 7 years later) as of May 31, 2009 carrying over \$48 Million of these assets on CFC's books.

d. In the 10Q for the Q/E 2/28/2009, CFC stated on page 15 that:

Foreclosed assets include two land development loans. Primarily due to current economic conditions, lot sales have slowed down for one of the land developers, thereby putting a strain on cash flows and the borrower's ability to make loan payments as scheduled. At January 1, 2009, this loan was put on non-accrual status. During the quarter ended February 28, 2009, the other land development loan was restructured to lower the interest rate due to concerns about the borrower's ability to meet all future payments based on the original loan terms. As a result, the Company classified both land development loans as impaired pursuant to the provisions of SFAS 114, *Accounting by Creditors for Impairment of a Loan - an Amendment of SFAS 5 and SFAS 15*, as amended ("SFAS 114"), at February 28, 2009.

It is incongruent that these land development loans (given market conditions during the interim period) could have been worth anywhere near the CFC carrying value as of November 30, 2002 and have to be placed on non-accrual status more than 6 years later - on February 28, 2009. All the foregoing are badges of fraud with respect to the valuation of foreclosed assets.

158. In fact, CFC's reporting is inconsistent with the disclosures in the reorganization plan of CoServ Realty Holdings, L.P. ("Holdings") which state:

a. Under "Summary of the Plan" on page 1 of the Disclosure Statement, the plan states:

⁵¹ Texas has been experiencing huge investments by the petro chemical industry because of the outlook for rising energy prices.

As the Debtor's Assets are largely comprised of the Developer Loans, the transfer of the Assets **will ensure the future funding by CFC of unfunded advances under the Developer Loans.**" (Emphasis added)

CFC assumed future obligations to fund developer loans.

b. The Disclosure Plan on page 16 stated:

The Debtor guaranteed certain indebtedness of its Affiliates to CFC, including, without limitation, the following: (i) Term Note A (Telecom Note 2) dated March 15, 2001 of Telecom Holdings payable to the order of CFC in the original principal amount of \$110,000,000.00; (ii) Term Note B (Telecom Note 3), dated March 15, 2001 of Telecom Holdings payable to CFC in the original principal amount of \$110,000,000.00; ...

Note that CFC had Telecommunication loans of over \$268.5 Million which were exchanged for \$28 Million in assets but recorded no loss.

c. The Disclosure Plan, on page 16, in explaining why bankruptcy was filed, stated:

The Restructure Documents also required that the telecommunication assets of Affiliates of the Debtor be marketed and sold by September 30, 2001. If the telecommunication assets were not sold by that date, Telecom Holdings was obligated to repay its loans or exercise a "put" option which would require CFC to buy the telecommunications assets of Telecom Holdings upon certain conditions. ... In August of 2001, the Debtor informed CFC that it planned to exercise the Put Option. The Debtor and CFC disagreed on whether the Debtor could exercise the Put Option without FCC approval to transfer the assets. This disagreement resulted in litigation (the "Put Litigation").

CoServ tried to put the Telecom assets to CFC pursuant to a pre-bankruptcy restructuring agreement.

d. The Disclosure Plan, on page 16, in explaining why bankruptcy was filed, stated:

The Debtor has continuing obligations to fund under the Developer Loans. Furthermore, the Debtor received title to the Hotel and Golf Course through a foreclosure on December 4, 2001, and **needed additional funds to operate those properties.** Accordingly, on February 1, 2002, the Debtor filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division. (Emphasis added)

Note that Holdings, a CoServ affiliate, could not continue to fund the hotel and golf

course.

159. Upon information and belief, CFC's misreporting of foreclosed assets has continued after the foreclosure in the following respects:

a. CFC continued investments in the foreclosed assets which are not recognized or disclosed because CFC treats such investments either as an investment in a controlled subsidiary (that is consolidated with CFC to reflect equity that is not there) or as a members' loan on CFC's books; and

b. CFC does not reflect the actual loss when assets are sold.

160. For example, the CoServ Telecom transaction was completely misreported. CFC reported taking over the Telecom assets and on October 27, 2003, CFC sold the Telecom assets to "Denton Telecom Partners d/b/a Advantex" (10Q f/q/e 11/30/2003, FN 4, p. 13). Upon information and belief, CoServ's former management:

a. Operated the telecommunications business under the name of Advantex during the period held by CFC;

b. Acquired the Telecom assets from CFC; and

c. If CoServ's former management paid cash it was through loans indirectly or directly funded by CFC.

161. Other intentional misreporting related to the CoServ loan includes, but is not limited, to:

a. CFC did not disclose that CoBank would have a \$10,000,000 priority security interest in CoServ's assets. The provision in the restructure note stated:

“CoBank Note” shall mean that certain secured promissory note in the stated principal amount of \$10,000,000.00, dated as of even date herewith, made by Borrower to the order of CoBank (as the same may be amended, modified or restated, but not increased in stated principal amount, from time-to-time), which note is secured by a Lien on the Mortgaged Property having priority over the Liens granted by Borrower for the benefit of CFC to secure the Obligations.

b. That the CoServ obligation to CoBank was a 5-year payout with an annual interest rate of at least 8.5% even though CoBank had a superior security interest in the assets and much shorter term (a 5-year payout).

c. That the proceeds of the CoBank loan were payable to CFC; thus, CFC indirectly invested another \$10 Million in the CoServ reorganization by allowing a priority lien against CoServ’s assets and allowing that CoBank loan to be paid out first. Page 38 of the Joint Disclosure Statement in paragraph h states as follows:

“The CoBank Loan Documents shall have been funded and \$10,000,000.00 of the proceeds paid to CFC....”

d. Upon information and belief, CFC had to directly or indirectly invest over \$50 Million⁵² to fund the CoServ reorganization and nowhere does CFC disclose or explain such additional investment in a failed electric utility distributor. Nowhere is the amount expended by CFC to fund CoServ’s reorganization plan deducted: all sums were rolled into either asset or loan values.

162. CoServ’s reorganization was successful⁵³ from CoServ’s prospective; however, CFC is forced to carry CoServ on non-accrual status as a departure from GAAP – to amortize the

⁵² The original \$28 Million deduced from the 11/30/2002 disclosure; the additional \$12 Million buried in telecommunication assets at year-end [reported at \$39 Million]; and the \$10 Million investment by CoBank.

⁵³ Presently there is pending a member law suit against CoServ based, in part, upon the failure of CoServ to distribute enough post-reorganization earnings to members: thus, the restructuring was a success. The suit was removed to the Federal District Court of Texas, Eastern District. *See Brady et al v. Denton County Electric Cooperative, Inc.*, CASE #: 4:09-cv-00130.

loan. The Comptroller of Currency⁵⁴ gives this explanation of nonaccrual status:

The decision on whether a bank places a loan on nonaccrual should be determined in accordance with the Federal Financial Interagency Examination Counsel (FFIEC) Call Report Instructions (call report). The general rule is that an asset should be placed on nonaccrual when principal or interest is 90 days or more past due or payment in full of principal or interest is not expected, unless the asset is well secured and in the process of collection. According to the Comptroller's Handbook booklet, "Rating Credit Risk" (April 2001), there is no requirement that a loan must be delinquent for 90 days before it is placed on nonaccrual. **Once reasonable doubt exists about a loan's collectibility, the loan should be placed on nonaccrual.** When payment performance depends on the drawing on lines of credit, the bank advancing additional loan funds, or the bank extending excessively lenient repayment terms, the loan should be considered for nonaccrual status. The key issues to consider are the collectibility of the loan and the concepts of well-secured and in the process of collection. (Emphasis added)

The above incorporates GAAP criteria for placing a loan as well as maintaining a loan on nonaccrual status.

163. CFC continues carries a good loan to CoServ on nonaccrual, a material departure from GAAP, in order to facilitate CFC's amortization of the CoServ loan loss.

164. Standing alone, the departures from GAAP as well as the material omissions and material misstatements related to the CoServ loan make all of CFC's materially misleading and, as a whole, not in conformance with GAAP.

165. Correct reporting of the CoServ Loan Loss coupled with reporting the ICC Loan as restructured would have resulted in a cascading effect resulting in the financial collapse of CFC.

The ICC Loan Loss Fraud

166. The CFC intentional misreporting of the ICC loan proves unequivocally that CFC reporting regarding events within the CFC/RTFC loan portfolio is materially misleading and fraught with material omissions.

⁵⁴ See <http://www.occ.treas.gov/NBA/Misc1Q03.htm>

167. ICC defaulted on its loans in 2001. In July of 2001 Innovative Communication Corporation (“ICC”) and its wholly owned subsidiary, the Virgin Islands Telephone Corporation (“Vitelco”) received letters acknowledging partial payment of their loans.

a. The second paragraph of the RTFC letter to ICC stated:

The partial payment was insufficient to meet the borrower’s obligations under the ICC Loans. A balance of \$4,469,765.67, (representing the principal payment due on June 30, 2001) remains due and payable in full as of the date of this letter.

b. The second paragraph of the RTFC letter to Vitelco stated:

The partial payment was insufficient to meet the borrower’s obligations under the VITELCO Loans. A balance of \$1,707,386.57, (representing the principal payment due on June 30, 2001) remains due and payable in full as of the date of this letter.

168. Further, in a brief submitted to the Federal District Court RTFC stated, on pages 4-5, that:

In mid-March 2001, ICC informed RTFC that it was unable to pay \$18.9 million of debt service due on March 31. ICC and Vitelco also missed their June debt service. On July 2, 2001, ICC advised RTFC that it did not have the cash to meet its loan obligations. (Letter and Memo, RTFC Exhibit Binder, Exh. 1.)

See Rural Telephone Finance Cooperative v Innovative Communication, V.I. Federal District Ct., Case No. 2004-0154, Dated October 14, 2005.

169. Negotiations ensued in which the August 27, 2001 Loan Agreement was executed (the “2001 Loan Agreement”). On paper, RTFC advanced additional funds as a result of ICC’s and Vitelco’s loan default.

170. RTFC’s August 20, 2001 Credit Recommendation described the Loan as follows:

Loan Purpose/Amount:

The total amount of this loan is \$169,291,578. Funds will be used by ICC as follows: (I) \$79,518,056 will refinance the company's outstanding balances on two RTFC bridge lines of credit (VI 802-9904 and 9906) and a general purpose line of credit (VI 802-5105), (ii) \$61,539,193 will, in an effort to facilitate better cash management at the company, **these funds will be transferred internally to pay principal payments due under ICC's and Vitelco's RTFC loans** while the borrowers' use internally generated cash to fund construction expenditures, and (iii) \$28,234,329 will finance the purchase of SCCs that are in an amount sufficient to result in an overall outstanding debt-to-SCC

ratio of 10%. The initial advance will include sufficient SCCs to bring ICC up to the 10% SCC level, thereafter, advances will include the purchase of 10% SCCs. The amortization of SCCs will be used to pay down principal outstanding on both ICC's and Vitelco's RTFC term loans. (Emphasis added)

171. With respect to the 2001 Loan, ICC:

- a. Received no cash;
- b. In a Ponzi scheme, RTFC loaned ICC and Vitelco money (in reality, forced ICC and Vitelco to borrow money) to increase their investment in RTFC Subordinate Capital Certificates (which gets reinvested in CFC's Capital Term Certificates); and
- c. Borrowed a sum necessary to pay ICC's and Vitelco's principal payments due the next two (2) years, thus effectively placing ICC and Vitelco on an interest-only basis.

Even though ICC was not receiving a dime and was not investing a dime, **ICC's loan was restructured** so that (i) it appeared more secure (larger amounts of subordinated capital certificates acquired with new loans) and (ii) only had to pay interest for the next two years.

172. FAS 114, ¶ 8, provides:

A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. As used in this Statement and in Statement 5, as amended, *all amounts due according to the contractual terms* means that both the contractual interest payments and the contractual principal payments of a loan will be collected as scheduled in the loan agreement. (Emphasis is as set forth in FAS 114)

FAS 118, ¶ 6a, clarifies the term "contractual terms" stating that the term means the loan terms and conditions as originally made and not as adjusted in a restructured loan agreement.

173. The ICC loan was impaired because ICC could not and did not make payments as

they became due so both ICC and Vitelco were effectively⁵⁵ placed on an ‘interest only’ basis.

174. The default and loan restructuring took place before CFC issued the FY 2001 10K on August 29, 2001 which makes the ICC restructuring a reportable event requiring the ICC loan to be reported as restructured.

175. Had the ICC loan been properly classified as restructured, CFC’s total of restructured and non-performing loans which had jumped from FY 2000 from \$571.6 Million to \$1,466 Million in FY 2001, a 256% increase, should have jumped to \$2,053 Million or a 359% increase. Non-performing and restructured loans should have jumped from 2.90% of the Total Loan Portfolio in FY 2000 to 10.43% of the Total Loan Portfolio in FY 2001 instead of the 7.45% which was falsely reported.

176. The ICC loans (which includes Vitelco) represented in FY 2001 3% of the Total Loan Portfolio (when described by state⁵⁶, more than the CFC loans to all but 8 states); for FY 2002 represented 3.1% of the Total Loan Portfolio (when described by state⁵⁷, more than the loans to all but 7 states); and for FY 2003 represented 3.2% of the Total Loan Portfolio (when described by state⁵⁸, more than the loans to all but 6 states).

177. The failure to report the ICC loan in FYs 2001 and 2002 is a material⁵⁹ omission which makes CFC’s financial disclosure materially misleading.

178. Failing to report the ICC loan as restructured in FYs 2001, 2002, and 2003 was a

⁵⁵ The 2001 loan paid Vitelco’s and ICC’s principal obligation (“these funds will be transferred internally to pay principal payments due under ICC’s and Vitelco’s RTFC loans”) for the next two (2) years.

⁵⁶ The smallest number of borrowers in the 8 states was Utah with 11 borrowers.

⁵⁷ The smallest number of borrowers in the 7 states was Colorado with 40 borrowers.

⁵⁸ The smallest number of borrowers in the 6 states was Colorado with 40 borrowers.

⁵⁹ Pursuant to 17 CFR Part 211, Subpart B, SAB 99, 64 FR 45150.

material departure from GAAP and a material⁶⁰ omission making CFC's reporting fraudulent.

179. The fact that the ICC misreporting transpired when CFC was committing the CoServ loan fraud only exasperates the material omission. This is a pattern of misreporting loan losses.

180. In FY 2003, after commencing an unlawful foreclosure (explained later), ICC and CFC entered into an agreement in April of 2003 to amortize the ICC loan whereby ICC would repay the principal and interest over a 30-year term at interest rates for Telephone Loans was effectively subsidized. ICC paid an interest rate of 6% when the weighted average interest rates for long-term fixed rate Telephone loans were 7.77% as of May 31, 2003.

181. The ICC in FY 2003 and FY 2004 should have been restructured because of each of the following factors:

a. After the end of the interest-only payment period and recommencing principal payments, ICC's principal payments did not conform to the principal amortization required when the loans were originally made;

b. CFC states⁶¹ with respect to Telephone loans that "Long-term loans are generally for periods of up to 15 years" when the ICC amortization period was 30 years; and/or

c. Vitelco and ICC were given a fixed rate for a longer term than normal and the rates were lower than current rates at which similar loans would be made by CFC to borrowers with similar credit ratings and for the same remaining maturities.

182. The ICC loans were material to CFC in all fiscal years including FY 2004. CFC reported that 22% of its Total Loan Portfolio was loaned to its top 10 largest borrowers (2004

⁶⁰ Pursuant to 17 CFR Part 211, Subpart B, SAB 99, 64 FR 45150.

⁶¹ See 2004 10K, Telecommunications loan programs, long-term loans, p. 8.

10K, “Credit Concentration”, p. 49). The ICC loan constituted, as of May 31, 2004, 2.7% of CFC’s Total Loan Portfolio (2004 10K, p. 3).

183. The failure to report the ICC loan in FYs 2003 and 2004 is a material omission which makes CFC’s Financial Statements materially misleading.

184. On June 1, 2004, CFC commenced an unlawful foreclosure action (explained later) against ICC when coupled with CFC manipulations during the foreclosure process resulted in ICC’s bankruptcy and the attempt to sell ICC’s assets.

The ICC Loan Loss Fraud: The Numbers.

185. The ICC foreclosure has resulted in yet another catastrophic loan loss for CFC which consistent with the CoServ loan practices, is being materially misreported because CFC would not exist but for Loan Loss reporting fraud.

186. The Trustee of the ICC bankruptcy filed a comprehensive report with the Bankruptcy Court March 2, 2009 reporting the receipts and disbursements for ICC and its affiliates through February 20, 2009 (the “Trustee’s Comprehensive Summary”). See Case 3:07-bk-30012-JKF Doc 1143 Filed 03/02/09.

187. The ICC assets had been divided in three groups of assets for the Trustee’s sale. Group I Assets consist of –

(This section is intentionally left blank)

GROUP 1 –TELECOM AND NON-FRENCH CABLE OPERATIONS	
Subsidiary or Operating Unit	Nature of Operations
Innovative Long Distance, Inc., a USVI corporation	Provider of long distance service to end users in the USVI and wholesale service to interexchange carriers
Innovative Business Systems f/k/a Vitelcom	An operating division of New ICC that sells, leases, and services equipment located in the USVI
VI PowerNet	An operating division of New ICC that provides high speed and dial-up internet access
St. Croix Cable TV, Inc. d/b/a Innovative Cable TV – St. Croix, a USVI corporation	Exclusive cable provider on the island of St. Croix
Caribbean Teleview Services N.V. d/b/a St. Maarten Cable TV, incorporated under the laws of the Netherlands Antilles ³	Exclusive cable provider on Dutch side of St. Martin
B.V.I. Cable T.V. Ltd. d/b/a BVI Cable TV, incorporated under the laws of British Virgin Islands	Exclusive cable provider in the British Virgin Islands
Caribbean Communications Corp. d/b/a Innovative Cable TV – St. Thomas – St. John, a USVI corporation	Exclusive cable provider on islands of St. Thomas and St. John
iCC TV2, Inc., a USVI corporation	Cable television station in USVI
SMB Boatphone Holdings, Ltd., a British Virgin Islands international business corporation, which in turn owns the following intermediate holding company and operating subsidiary: <ul style="list-style-type: none"> • Mobarton Investment N.V., incorporated under the laws of the Netherlands Antilles • Eastern Caribbean Cellular N.V. (“ECC”), incorporated under the laws of the Netherlands Antilles 	Intermediate holding company Intermediate holding company ECC and SMM together provide island-wide mobile phone services to the Dutch and French sides of St. Martin
St. Martin Mobiles S.A. (“SMM”), incorporated under the laws of France ⁴	ECC and SMM together provide island-wide mobile phone services to the Dutch and French sides of St. Martin

The Group II Assets consist of –

GROUP 2 – FRENCH CABLE OPERATIONS	
Subsidiary or Operating Unit	Nature of Operations
Minion Corporation N.V., incorporated under the laws of the Netherlands Antilles, which in turn owns the following intermediate holding companies and operating subsidiaries:	Intermediate holding company
<ul style="list-style-type: none"> • Valvision Telecommunications B.V., a Dutch corporation 	Intermediate holding company
<ul style="list-style-type: none"> • Valvision S.A.S., incorporated under the laws of France 	Exclusive cable provider in several municipalities in eastern France
<ul style="list-style-type: none"> • World Satellite Guadeloupe S.A., incorporated under the laws of France 	Exclusive cable provider in Guadeloupe; also provides internet services
<ul style="list-style-type: none"> • H.M. Beuk Beleggingen V.B., a Dutch corporation 	Intermediate holding company
<ul style="list-style-type: none"> • Alta B.V., a Dutch corporation 	Intermediate holding company
<ul style="list-style-type: none"> • Martinique TV Cable S.A., incorporated under the laws of France 	Exclusive cable provider in Martinique; also provides internet services

The Group III Assets consist of –

GROUP 3 – MEDIA OPERATIONS	
Subsidiary or Operating Unit	Nature of Operations
Daily News Publishing Co., Inc. d/b/a Virgin Islands Daily News, a USVI corporation	Publisher of The Virgin Islands Daily News

See Case 3:07-bk-30012-JKF, Doc 443, Filed 02/06/08, p. 26-27 of 35

188. The Trustee's Comprehensive Summary was dated after the sale and disbursement of proceeds of the Group II Assets and the Group III Assets.

189. The Trustee's Comprehensive Summary reported the following table with respect to the RTFC claim:

(This section is intentionally left blank)

RTFC Proof of Claim:	\$524,910,065
Less Sales Proceeds Turned Over:	
727 Aircraft	(\$1,523,818)
Pissarro Painting	(\$3,780,000)
Bjerget House	(\$7,547,463)
Daily News Sale	(\$5,245,500)
Group 2 Assets Proceeds:	(\$9,945,385)
Total Sales Proceeds Turned Over:	(\$28,042,166)
Remaining Claim (Approx.):	\$496,867,899

Thus, notwithstanding the sale and disbursement of all the Group II Assets and the Group III Assets, the Bankruptcy Estates of ICC, ICC-LLC and Emerging all under the control of the same Trustee (the Chapter 11 Trustee) has distributed only \$28 Million to CFC/RTFC.

190. However, CFC/RTFC has an obligation to pay the Greenlight Defendants a minimum payment of \$27.5 Million under a document titled as “Intercreditor Agreement” whereby CFC/RTFC have agreed to buy the Greenlight Defendants claim against ICC. *See Case 3:07-bk-30012-JKF, Doc 1, pgs. 6 thru 28, Filed 07/05/07.*

191. The salient financial concessions and financial obligations of CFC/RTFC that run to the benefit of the Greenlight Defendants are:

a. Upon ICC’s bankruptcy, RTFC was to pay the Greenlight Defendants -

“RTFC shall pay the Greenlight Entities the aggregate sum of \$15,000,000 and, upon such payment, the Greenlight Entities shall be deemed to have sold and assigned to RTFC \$60,000,000 of the Greenlight Claim”
See Case 3:07-bk-30012-JKF Doc 1, Page 13 of 38, Filed 07/05/07

b. Upon the sale of the ICC assets, RTFC was to pay the Greenlight Defendants a minimum payment of -

“RTFC shall pay the Greenlight Entities the aggregate sum of \$12,500,000, and, upon such payment, the Greenlight Entities shall be deemed to have sold and assigned to RTFC the balance of the Greenlight Claim”

See Case 3:07-bk-30012-JKF Doc 1, Page 13 of 38, Filed 07/05/07

c. In addition to the minimum payment of \$12.5 Million from the sale of the ICC assets, RTFC was to pay the Greenlight Defendants additional consideration of –

“10% of the value of any such additional payment or distribution (*i.e.*, payments or distributions over and above the first \$327,500,000”

See Case 3:07-bk-30012-JKF Doc 1, Page 14 of 38, Filed 07/05/07

d. As additional incentive to the Greenlight Defendants, the Intercreditor Agreement provided with respect to Jeff Prosser’s personal estate, the Chapter 7 Estate, that –

“RTFC agrees to subordinate its claims against the Prosser Assets to the first \$35,000,000 of the Greenlight Entities' claims against the Prosser Assets.”

See Case 3:07-bk-30012-JKF Doc 1, Page 15 of 38, Filed 07/05/07

Thus, CFC/RTFC has a financial obligation to Greenlight independent of any recovery from the sale of the ICC assets of over \$27.5 Million: the \$15 Million due and payable upon ICC’s bankruptcy and the \$12.5 Million due and payable when the ICC assets are sold (“Greenlight Obligation”).

192. On February 2, 2009, CFC paid Greenlight the initial \$15 Million. *See Case 3:07-bk-30012-JKF, Doc 1470, Filed 10/06/09.* There was no reporting of this payment in CFC’s SEC filings.

193. Through the sale of the Group II Assets and the Group III Assets, RTFC has recovered, after the Greenlight Obligation, an immaterial sum constituting less than \$1 Million; that is, before CFC’s outlay for attorney fees. Upon information and belief, CFC’s direct payments of attorney fees related to the ICC foreclosure and sale of assets exceed the \$28 Million received.

194. The Group I Assets consists of numerous subsidiary entities (the “Non-Debtor

Subs”) which have their own internal liabilities that are separate and independent of ICC’s indebtedness.

195. The Non-Debtor Subs liabilities range from \$175 Million to \$185 Million.

196. For RTFC to recover a dime from the sale of the Group I Assets, the Non-Debtor Subs, a bid has to exceed the \$175 Million to \$185 Million, Non-Debtor Subs’ indebtedness, as well as additional millions to cover unpaid administrative costs directly related to the administration of the ICC estate.

197. The Group I Assets, after extensive marketing efforts for nearly a year, have not attracted a bid that **would yield any recovery whatsoever** for CFC/RTFC on the ICC loan.

198. Further, the Chapter 7 Estate of Jeffrey J. Prosser is less than the \$35 Million of the RTFC claim subordinated to the Greenlight Defendants so there is recovery to be expected from the Chapter 7 Estate for CFC/RTFC.

199. The market value of the Group I Assets has been unequivocally established:

a. The bid deadlines for the ICC assets –

(i) The first bid deadline was May 5, 2008. *See* Case 3:07-bk-30012-JKF, Doc 443, Page 28 of 35, Filed 02/06/08.

(ii) The second bid deadline was June 10, 2008. *See* Case 3:07-bk-30012-JKF, Doc 531-1, Page 5 of 11, Filed 03/20/08.

(iii) The third bid deadline was July 29, 2008. *See* Case 3:07-bk-30012-JKF, Doc 714, Page 2 of 4, Filed 06/04/08.

b. All the bid deadlines passed **without a qualified bid** on the Group I Assets and the Group II Assets.

Testimony of Adam Dunayer, Managing Director of Houlihan Lokey

I believe eight of the 12 management presentations that were had on the Group II assets were done by the Alvarez team. And then there was a **final bid deadline whereby no one submitted a final bid on the** Group II assets at that point in the process which is about when we -- we came in shortly thereafter [August of 2008]. (Emphasis added)

See Hearing transcript from the sale of the Group II Assets, Case 3:07-bk-30012-JKF, Doc 1068, Page 72 of 254, Filed 01/06/09.

There was 175 to \$185 million dollars of liabilities that needed to be satisfied or settled in some way at the operating companies, and so, just to find somebody to come in for a dollar, whether or not we could've gotten the RTFC to release their -- release that stock, because it was their stock they were holding for a dollar, that's beside the point for this hypothetical, but that is, you know, **without significant debt financing, we weren't able to achieve those kind of evaluations.**

...

So, the RTFC surprisingly put forth a term sheet to the bidding field. So, anybody that was qualified was -- would be able to borrow ... This is \$185 million of new capital to qualified buyers to help with their purchase of the stock of New ICC.

...

I think the debt [the RTFC Term Sheet] was dramatically helpful in people's evaluation of the process. **Without that debt, the process would've died November -- October even.** (Emphasis added)

See Hearing transcript from the sale of the Group I Assets, Case 3:07-bk-30012-JKF, Page 145-146 of 287.

c. The Group II Assets sold in December of 2008 for €17 Million. As part of the sale of the Group II Assets, ICC had to transfer liabilities to the purchaser own from the companies that composed the Group II Assets to ICC of ~~€~~87.5 Million – a loss of at least €70.5 Million. *See* Case 3:07-bk-30012-JKF, Doc 1033-1, Filed 12/09/08. The distribution⁶² to CFC/RTFC of \$9.9 Million related to the sale of Group II Assets was

⁶² There was a substantial period of time before the money was distributed because the attorneys and Trustee have accrued and approved fees that were unpaid which exceeded the full sales price of the Group II Assets. In fact, it is

included in the Chapter 11 Trustee's Summary of Cash receipts and disbursements through February 20, 2009 and hence, part of the \$28.5 Million received to date.

d. There was no net market value to the ICC assets. The marketing process that ascribed a Market Value to the Group I Assets after the payment of the Non-Debtor Subs' liabilities of a sum that after the payment of administrative expenses accrued and incurred while regulatory approvals were received would have resulted in no recovery.

Testimony of Adam Dunayer, Managing Director of Houlihan Lokey

The Alvarez Firm put together a confidential information memorandum and data room of diligence information as well as a presentation that was delivered by management to various bidders. **Collectively both Alvarez and Houlihan contacted over 300 people for these assets**, and most of them were initially contacted by Alvarez. We contacted a few more when we got on the ground. (Emphasis added)

See Hearing transcript from the sale of the Group II Assets, Case 3:07-bk-30012-JKF, Doc 1068, Page 72 of 254, Filed 01/06/09

The Court's Findings with respect to the Group I Assets.

But after a year marketing 300 entities contacted 12 who expressed interest, nine who apparently were interested enough to approach the trustee and go through significant due diligence and none who came forward with any offers at the end of that time. And then a second investment banking and financial advisory firm involved and only one who came forward. The Court can in no way see that additional marketing effort would be productive for the benefit of this estate or its creditors. So I believe the trustee has appropriately satisfied the business judgment test. This appears to have been widely and finally successfully marketed. There is a good faith effort on behalf of the estate and the bidders to market this property and engage in negotiations that have finally led to a sale. And I will sign the order when it is presented after the lunch recess.

See Hearing transcript from the sale of the Group II Assets, Case 3:07-bk-30012-JKF, Doc 1068, Page 118 of 254, Filed 01/06/09

Question and Answer Testimony of Adam Dunayer, Managing Director of Houlihan Lokey

A ... But, the valuations that people were willing to put on the table for this particular process was in the \$200 million range. So, approximately \$15 million or so above and beyond the debt that the RTFC was offering to qualifying bidders.

believed that CFC guaranteed the payment of fees to receive the distribution - appearances are more important than reality.

Q So, if I understand you that means with respect to the roughly half of a billion dollars owed to the RTFC, currently they would've gotten about \$15 million?

A No, I -- that -- most of that \$15 million was going to get picked up by the administration of this case.

Q What would have netted to the RTFC, if anything, in a bid around 200 million?

A I believe it would be nothing to single digit millions. Insignificant in the grand scheme of this process.

Q In your experience as an investment banker selling distressed assets including out of Chapter 11s, what is the best indicator of value of what's being sold?

A A broad marketing process that's highly accessible to qualified bidders.

Q Do you consider that the process undertaken by Houlihan and Alvarez prior to Houlihan was such a process?

A I do.

Q And as a result of that do you feel that the 200 million range was a fair indicator of value for the Group I assets?

A Yes.

See Hearing transcript from the sale of the Group I Assets, Case 3:07-bk-30012-JKF,

Page 147-148 of 287.

200. Houlihan Lokey was engaged by the Chapter 11 Trustee because RTFC mandated the engagement and agreed to backstop the cost of the engagement of Houlihan Lokey after the Chapter 11 Trustee's and that of the Trustee's firm, Alvarez and Marsal, marketing efforts did not yield a qualified bid.

a. The Trustee acknowledges that Houlihan was hired at RTFC's insistence:

In the Trustee's discussions with the RTFC regarding the sale process, ... the **RTFC has requested that the Trustee retain Houlihan Lokey Howard & Zukin Capital, Inc.** ("Houlihan Lokey"), as his financial advisor and to provide investment banking services in order to assist the Trustee in the sale process. (Emphasis added)

See Trustee's Motion to hire Houlihan, Case 3:07-bk-30012-JKF, Doc 869, page 4 of 10, ¶ 9, Filed 09/05/08.

b. Court Order approving Houlihan acknowledges RTFC's backstopping Fees:

ORDERED that, per the agreement set forth on the record: (a) in the event that the RTFC's claim against the Estate is paid in full, the allowed fees and expenses owing to Houlihan Lokey in accordance with the Engagement Letter and this Order shall be paid as a surcharge against the RTFC's collateral in accordance with 11 U.S.C. § 506(c), or (b) in the event that the RTFC's claim against the Estate is not paid in full, the RTFC has agreed to subordinate its claim to the payment of allowed fees and expenses owing to Houlihan Lokey in accordance with the Engagement Letter and this Order.

See Court's Order, Case 3:07-bk-30012-JKF, Doc 937, page 3 of 3, Filed 10/07/08.

201. As of April 6, 2008, through an extensive marketing process carried on by two nationally recognized firms, Alvarez and Marsal followed by Houlihan Lokey, for more than a year, CFC/RTFC would have **NO net recovery** from the sale of the ICC's assets.

202. CFC's/RTFC's ICC Loan Loss is one hundred percent (100%) of the ICC loan, plus legal fees and other expenses (such as Houlihan Lokey) incurred.

The ICC Loan Loss Fraud: The Loan Loss Reserve For the ICC Loan

203. CFC's known Loan Loss Provisions for the ICC loan are wholly inadequate.

a. In an August 18, 2004 memo (the "Grier Memo"), the current controller of CFC, Bob Grier, memorialized his discussions with Ernst stating:

"I think that I satisfied them with the following

- **ICC is a viable business** that can be operated in a manner to pay the debt service
- existing management continually is pushing the edge and **we have finally decide we have had enough and want to replace management.**
- while we believe that the **company has the ability to pay debt service**, the green light litigation and the company's issuance of preferred stock - one of issues in our litigation - has increased the uncertainty related to the credit.
- that while **we initially moved the reserve up to \$99 million, we subsequently reduced it to \$92 million based on the analysis** and adding the pat cap to that analysis as an offset.

Cain has asked us to provide with what ICC would have been at the minimum - we gave them the calculation - \$87 million.

- I think that they should be ok with the slight increase due to the increase in uncertainty related to green light and RTFC litigation." (Emphasis added)

This memo establishes the Loan Loss reserve for the ICC loan after the foreclosure was initially \$92 Million.

b. CFC took another Loan Loss Provision of \$114 Million ICC against the earnings reported in the 10Q for the Q/E 11/30/2008. This amount of the loan loss provision allocated to the ICC loan was actually disclosed in more detail in the 10Q for the Q/E 2/28/2009 which stated on page 51, that:

In late November 2008, the Company engaged an outside consultant to renew the valuation of ICC that had been performed during the summer of 2008. The update of the appraisal of ICC assets was triggered by the changing economic conditions that occurred during the Company's second quarter of fiscal year 2009, especially the tightening of the credit markets, coupled with indicators the Company was receiving from potential third party investors responding to the upcoming auction of the ICC assets. As a result of this new information, the Company recorded **an addition to the provision for loan losses of \$114 million during the quarter ended November 30, 2008.** (Emphasis added)

c. Note in the 2009 10K, p. 40, CFC claims an additional provision for the ICC loan of \$13 Million in the 3rd and 4th quarters of FY 2009 (nothing was explained in the 3rd qtr. 10Q when the \$114 Million provision was explained) though, the total CFC Loan Loss Provision for FY 2009 was less than \$114 Million.

d. The analysis of CFC's Loan Loss Provisions supports the conclusion that there have been no further Loan Loss Provisions for the ICC Loan since:

(i) CFC's total Loan Loss Provisions, in total, for FY 2005 through FY 2009, inclusive, totaled \$116 Million (\$16.4 MM for FY 2005 per 2007 10K, p. 82; \$23.2 MM for FY 2006 per 2007 10K, p. 82; **-\$6.9 MM** for FY 2007 per 2007 10K, p. 82; **-\$30.3 MM**⁶³ for FY 2008 per 2009 10K, p. 92; and \$113.7 MM for FY 2009 per 2009 10K, p. 92); and

(ii) With an ICC provision of \$114 Million recognized in the 10Q for the CFC's Q/E November 30, 2008, means that **CFC total additions to the LLR for all other loans during those years (FYs 2005 thru 2009, inclusive) was \$2.1 Million**⁶⁴, in a span of 4 years.

In conclusion, it would be remarkable, given the evidence, if CFC's loan loss reserve for ICC

⁶³ In FYs 2007 and 2008, CFC was taking sums from the Loan Loss Reserve and recognizing income.

⁶⁴ A recognition of income of \$16.2 Million resulting from an adjustment that decreases CFC's loan loss reserve means that for the period beginning June 1, 2004 through August 31, 2009, excluding the \$114 provision for ICC, CFC's loan loss reserved in fact decreased.

was still \$92 Million as of May 31, 2008.

204. The CFC Loan Loss Provisions for the ICC Loan through FY 2009 (May 31, 2009) were **\$206 Million** (\$92 Million plus \$114 Million) or, if the additional provision of \$13 Million purportedly added in the fourth quarter of FY 2009 is added (meaning that for FYs 2005 through FYs 2009, inclusive, CFC in fact a negative provision of \$10.9 Million for all other CFC Loans), then the CFC Loan Loss Provisions for the ICC Loan would be **\$219 Million** (the \$92 Million as of FY 2004, the \$114 Million of the 2nd quarter of FY 2009, and the \$13 Million purportedly made in 4th quarter of FY 2009). Thus, as of December 31, 2008, CFC's loan loss reserve, at best, for the ICC loan is:

- i. \$206 Million; or
- ii. \$219 Million.

In either case, CFC reserves for the ICC Loan are wholly inadequate.

205. CFC is intentionally misleading the investing public and the Federal Government (as of August 17, 2009 CFC has accessed Federal funding for more than \$5.264 Billion) by:

a. After the April 6, 2009 testimony established the complete loan loss for RTFC, on April 8, 2009 CFC filed the 10Q for the Q/E 2/28/2009 in which in FN 14d, p. 26, carried the ICC Loan at \$492 Million, **a \$7 Million increase in the ICC Loan balance** since reporting the ICC Loan balance at \$485 Million for the Q/E 11/30/2008 (*See* FN 13d, p. 25).

b. In the FY 2009 3rd quarter 10Q, CFC falsely represented: "Based on its analysis, the Company believes that it is adequately reserved for its exposure to ICC at February 28, 2009." (Q/E 2/28/2009 19Q, FN 14d, p. 27)

c. CFC is carrying a bloated ICC Loan Balance that, after applicable Loan

Loss Reserves, represents a loan loss or a charge to CFC's earnings of a minimum of **\$273 Million** (\$492 Million less \$219 Million in reserves) to **\$286 Million or more**⁶⁵.

The ICC Loan Loss Fraud: GAAP & Securities Law Mandate the Charge-off.

206. Reasonable men can not disagree, there is no justification whatsoever for having the ICC Loan on CFC's books by the 3rd Quarter 10Q (Q/E 2/28/2009).

207. Securities law, SEC 17 CFR Part 211, Financial Reporting Release 28, requires collateral generally **should be considered repossessed in substance and accounted for at its fair value** when (i) on a fair value basis, the debtor has little or no equity in the collateral; (ii) repayment of the loan can be expected to come only from the operation or sale of the collateral; and (iii) the debtor has formally or effectively abandoned control of the collateral to the creditor.

208. All the conditions of SEC 17 CFR Part 211, Financial Reporting Release 28 have, as of Trustee's displacement of Jeff Prosser's operating control over ICC in October of 2007, been satisfied.

209. The Fair Value of the remaining ICC Assets as of 2/28/2009 after the testimony of April 6, 2009 reciting facts known earlier was \$0.00, requiring the charge-off of the Bloated ICC Loan Balance.

210. Securities law is no different then the force and effect of GAAP –

a. *FAS 114*, ¶ 8 states “A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement.”

b. *FAS 114*, ¶ 10 states “*Probable*. The future event or events are likely to occur.”

⁶⁵ For FYs 2007 and 2008, CFC actually pulled money from its Loan Loss Reserves and recognized such as income so it is very possible, indeed probable, that the ICC Loan Loss Reserve of \$92 Million was decreased at the time.

c. *FAS 114, ¶ 13* states “Regardless of the measurement method, a creditor shall **measure impairment based on the fair value of the collateral when the creditor determines that foreclosure is probable**. A loan is collateral dependent if the repayment of the loan is expected to be provided solely by the underlying collateral.” (Emphasis added)

d. *FAS 114 ¶ 69* states “After considering comments received, the Board decided that when a creditor determines that foreclosure is probable, a creditor should remeasure the loan at the fair value of the collateral **so that loss recognition is not delayed until actual foreclosure**.” (Emphasis added)

e. *FAS 5 ¶ 8* states: “An estimated loss from a loss contingency (as defined in paragraph 1) shall be accrued **by a charge to income** if *both* of the following conditions are met:

a. Information available **prior to issuance of the financial statements** indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements. It is implicit in this condition that it must be probable that one or more future events will occur confirming the fact of the loss.

b. The amount of loss can be reasonably estimated.” (Emphasis added)

GAAP clearly requires CFC to recognize the ICC Loan Loss no later than the February 28, 2009 10Q (filed after the testimony).

211. Applying a lesson learned from CFC’s CoServ Loan Loss fraud with a special emphasis on foreclosed assets, CFC stated in its 10Q for the 3rd quarter of FY 2009 (Q/E 2/28/2009) that:

On March 13, 2009, RTFC and the Trustee entered into a Purchase Agreement as part of a \$250 million credit bid for the ICC Group 1 Assets. The Purchase Agreement is conditional upon the approval of the bankruptcy court and applicable regulators. On April 6, 2009, the Bankruptcy Judge approved, on an interim basis, the sale of the ICC Group I Assets to RTFC. RTFC will now begin the process of obtaining the applicable regulatory approvals. The Court has scheduled a status hearing for July 22, 2009, with a final hearing regarding the sale tentatively scheduled for August 31, 2009. See 2/28/2009 10Q, FN 14d, p. 27.

212. CFC is using its credit bid (the “Credit Bid”) to justify maintaining the Bloated ICC Loan Balance on CFC’s books.

213. CFC has departed from GAAP and SEC accounting requirements in that –

a. The SEC staff Emerging Issues Task Force (EITF) in Topic No. D-80, *Application of FASB Statements No. 5 and No. 114 to a Loan Portfolio* (EITF Topic D-80), FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss* (FIN 14) states:

Institutions should maintain prudent, conservative, but not excessive, loan loss allowances that fall within an acceptable range of estimated losses. Consistent with GAAP, an institution should record its best estimate within the estimated range of credit losses, including when the best estimate is at the high end of the range.

b. SEC 17 CFR Part 211, Financial Reporting Release 28, states:

On page 5 -

“However, where fair value accounting is required by generally accepted accounting principles (“GAAP”), the mere adoption of strategies (such as a hold-for-the-future strategy that is based on expectations of future price increases, or a strategy of operating the repossessed collateral for one's own behalf) **cannot justify use of derived accounting valuations that portray results of operations more favorably than would use of current values in active markets.**” (Emphasis added)

On page 6 -

“The Commission will presume that active markets reflect objective measures of current fair values, determined by the beliefs of reasonably informed persons regarding the present and future economic utility of the items being traded and the risks associated therewith. Thus, without independent and objective support for derived valuations that can be demonstrated to more appropriately reflect fair value in particular sets of circumstances, **derived valuations exceeding current values in active markets should not be used in cases where fair value accounting is required by GAAP.**” (Emphasis

added)

c. See FAS 114 and FAS 5 quoted in the foregoing paragraphs of the complaint which set forth the fundamental principal requiring a conservative presentation of assets and income.

214. Acquiring assets for debt which debt has NO intrinsic or fair market value (no different than play money) hoping for some future recovery can not serve as a basis to value assets.

215. While it is indisputable that CFC should have charged-off the ICC Loan Balance before publishing the 10Q for the Q/E 2/28/2009, in fact, CFC should have charged-off the ICC loan balance no later than May 31, 2008 – the end of FY 2008.

The ICC Loan Loss Fraud: Why the Charge-off in FY 2008.

216. Alvarez and Marsal received court authorization to begin selling the ICC assets on February 6, 2008 (Case 3:07-bk-30012-JKF, Doc 443, Sales Procedure Order) with a target date of May 5, 2008 for firm offers to purchase all the ICC assets.

217. Testimony in the December 19, 2008 Hearing on the sale of the Group II Assets and on the April 6, 2009 hearing on RTFC's credit bid established that Alvarez canvassed the market contacting over 300 potential buyers, distributing approximately 130 Confidential Offering Memorandums, allowing access to Electronic data room; made management presentations to interested parties, and

a. failed to obtain a qualified bid for the Group I Assets or the Group II Assets by May 5, 2008;

b. failed to obtain a qualified bid for the Group I Assets or the Group II Assets by the extended bid deadline of June 10, 2008; and

c. failed to obtain a qualified bid for the Group I Assets or the Group II Assets by the further extended bid deadline of July 29, 2008.

218. In addition to the testimony, other evidence that establishes that:

a. Several memos from the Virgin Islands Public Services Commission established that the prospect of a Virgin Islands Telephone Corporation (“Vitelco”) bankruptcy loomed large with an August 4, 2008 memo stating in caps “MANY OF THE DOWNSIDE SCENARIOS THAT WE HAVE DESCRIBED IN PREVIOUS MEMOS HAVE SUDDENLY AND SIGNIFICANTLY INCREASED THEIR PROBABILITY OF REALIZATION.”

b. In a complaint filed on December 18, 2008 by the Chapter 7 Trustee against Vitelco stated that a \$45,000 payment due June 3, 2008, from Vitelco to the Chapter 7 Estate could not be made because the Chapter 11 Trustee stated that VITELCO was suffering a liquidity problem.

c. On August 20, 2008, the Preferred Shareholders (some not all) wrote a letter to re-open a case against Vitelco because Vitelco did not obtain PSC approval of the stipulated judgment for \$76 Million, plus interest, and plus attorney fees by June 10, 2008.

d. RTFC’s valuations of ICC always were weighed heavily on the basis of Vitelco’s enterprise value which constituted over seventy percent (70%) of ICC’s enterprise value.

219. The following two considerations are relevant to the timing of loss recognition:

a. GAAP, specifically, *FAS 5*, ¶ 8, requires a charge to income of a loss contingency if the information “**available prior to issuance of the financial statements**

... indicates that it is probable that an asset had been impaired” and the “amount of loss can be reasonably estimated”; and

b. The Chapter 11 Trustee pleaded that throughout “the sale process, the Trustee has endeavored to keep the Rural Telephone Finance Cooperative (“RTFC”) apprised of his efforts and progress. *See* Case 3:07-bk-30012-JKF, Doc 869, Page 3 of 10, Filed 09/05/08

220. The critical date pursuant to GAAP to determine if CFC should have charged-off the ICC loan as of May 31, 2008 is **August 29, 2008**, the date that CFC filed the 10K for FY 2008.

221. The market had indicated by May of 2008, coupled with declining operating results (established in testimony in which the Telephone business was described as a dying business), that it was probable (likely) that the marketing would result in bids that would provide RTFC with any recovery whatsoever.

222. Consistent with both GAAP and SEC accounting releases that require collateral dependent loans to be reflected at Fair Value, CFC should have reflected a \$400 Million Loan Loss on its May 31, 2008 Financial Statement; that is, the \$492 Million ICC Loan balance less the \$92 Million Loan Loss Reserve⁶⁶ taken in FY 2004.

223. To NOT reflect the **\$400 Million ICC loan loss as of May 31, 2008** was an intentional act that made CFC financial statements materially misleading with a material omission.

The ICC Loan Loss Fraud: The Fraud In Postponing Recognition of the ICC Loan Loss.

224. CFC’s loan margins, if any, are too miniscule forcing CFC into a decision,

⁶⁶ The additional loan loss of \$114 Million was not reflected until November 30, 2008 or later so there was a reserve of only \$92 Million as of May 31, 2008 for the ICC Loan.

especially when faced with catastrophic loan losses such as ICC and CoServ, to commit additional fraud or go out of business.

225. CFC had to commit loan loss fraud with respect to ICC and the only issue was the amount of the ICC loan loss fraud.

226. It is clear from CFC's financial statements in CFC's SEC filings that CFC ultimately decided as follows:

- a. To use its credit bid of \$250 Million that establishes an assets value for the ICC assets of over \$400 Million to unlawfully avoid recognition of at least \$250 Million in mandatory charge-off of the ICC Loan Balance;
- b. To recognize an additional \$114 Million in the November 30, 2008 10Q for the 2nd quarter of FY 2009 (announced in an 8K filed December 2, 2008); and
- c. To juggle CFC's loan loss reserve to avoid recognition of any further loan loss that should lawfully be recognized with respect to the ICC Loan.

227. CFC avoided the recognition of the \$114 Million until announced in the 8K on December 2, 2008. The announcement stated:

For the quarter ending November 30, 2008, National Rural Utilities Cooperative Finance Corporation ("National Rural") expects to record a loss provision ranging from \$90 million to \$140 million primarily related to loans previously classified as impaired to Innovative Communication Corporation. The anticipated increase to the loss provision is primarily due to the significant disruptions in the capital markets, which have contributed to a decrease in the fair value of the collateral supporting the impaired loans. National Rural is continuing to evaluate market data related to the fair value of the collateral supporting impaired loans to this borrower.

The provision as stated in the 3rd quarter 10Q, p. 51, CFC stated: "As a result of **this new information**, the Company recorded an addition to the provision for loan losses of \$114 million during the quarter ended November 30, 2008." (Emphasis added)

228. On October 15, 2007, CFC filed a 10Q for the Q/E 8/31/2007 which in FN 15, p. 26, acknowledged an extra-ordinary funding requirement for CFC, stating:

Subsequent to the end of the quarter, holders of \$2,040 million of the Company's extendible debt elected not to extend the maturity. As a result, a total of \$1,795 million of extendible debt reported in long-term debt at August 31, 2007 will be reclassified as short-term debt during the quarter ended November 30, 2007 based on maturity dates in September and October 2008. The remaining the \$245 million of extendible debt will mature in October 2009.

This was in addition to CFC's normal funding requirements and equals 18.05% of the indebtedness that CFC classifies as long-term pursuant to FN 6, p. 16, of the 10Q for the Q/E 8/31/2007.

229. CFC intentionally postponed ANY ICC Loan Loss provision (recognition) even though it was absolutely apparent that the ICC Loan was a complete charge-off as of May 31, 2008 because of CFC's reliance and need to access funds to refinance CFC's indebtedness.

230. In addition to funds that CFC accesses daily through an extensive broker-dealer market, CFC accessed the following funds during calendar year 2008, after the Chapter 11 Trustee had obtained effective control over the ICC assets:

Date		(in Thousands) Amounts
Jan-08	5.45% Collateral Trust Bonds due 2018	700,000
Mar-08	Farmer Mac of floating rate debt due in 2013	400,000
Jun-08	5.50% Collateral Trust Bonds due 2013	900,000
	Floating Rate Collateral Trust Bonds due 2010	400,000
Sep-08	REDLG program loan	500,000
Oct-08	10.375% Collateral Trust Bonds due 2018	<u>1,000,000</u>
Total Funds Raised		<u><u>3,900,000</u></u>

231. CFC **fraudulently raised \$3.9 Billion** in calendar year 2008 before announcing any further reserve with respect to the ICC loan with \$2.8 Billion secured after the second bid

deadline passed for ICC's Group I Assets and Group II Assets without one acceptable bid. In fact, the last \$1.5 Billion was raised after CFC forced Houlihan Lokey upon the Chapter 11 Trustee.

232. CFC's financial desperation is apparent by the fact that CFC agreed to pay 10.375% on collateralized bonds issued in October of 2008, when compared to earnings CFC receives on members' loans. CFC's FY 2008 10K, FN 2, p. 96, stated that the weighted average interest rate earned on all CFC loans outstanding during the fiscal years ended May 31st of FYs 2006, 2007 and 2008 was:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Long-term fixed rate	6.05%	5.87%	5.64%
Long-term variable rate	6.94%	7.58%	6.43%
Loans guaranteed by RUS	5.49%	5.59%	5.34%
Short-term	5.89%	7.06%	6.07%
Non-performing	0.01%	0.02%	0.01%
Restructured	0.64%	0.61%	0.08%
Total	5.81%	5.79%	5.48%

233. The negative leverage accepted by CFC to obtain \$1 Billion was significant: 381 basis points above the weighted average interest rate earned on CFC's highest priced loans (Long-term variable rate) and 494 basis points above the average weighted average interest rate earned on CFC's Total Loan Portfolio.

234. The same motivation that caused CFC to accept \$1 Billion in collateralized investments is exactly the same motivation that causes CFC to commit accounting fraud including fraud in reporting loan losses.

235. Had CFC recognized the ICC Loan Loss Provision of just \$114 Million, which is still wholly insufficient on May 31st 2008, CFC would not have received the \$2.8 Billion raised in June through October of 2008 and would have financially collapsed.

The ICC & CoServ Loan Losses: The Numbers.

236. The failure to properly account for the CoServ and ICC Catastrophic Loan Losses has caused CFC to materially overstate Total Equity, a GAAP number, and Members' Equity, the number that CFC's management deems critical for measuring CFC's financial performance.

237. Reporting the bloated CoServ loan balance, in and of itself, is materially misleading. The table sets forth CFC's overstatement of the CoServ loan balance in every 10K.

Year	CoServ Yearend	Calendar Year	CoServ 5/31	CFC's 5/31	Overstatement
	<u>Loan Balance</u>	<u>Payments</u>	<u>Loan Balance</u>	CoServ Loan <u>Balance</u>	
2009	353,549,553	28,768,636	346,357,394	491,000,000	144,642,606
2008	357,826,242	28,700,383	350,651,146	519,000,000	168,348,854
2007	361,832,507	28,431,199	354,724,707	545,000,000	190,275,293
2006	361,850,873	24,444,461	355,739,758	569,000,000	213,260,242
2005	361,868,077	24,444,387	355,756,980	594,000,000	238,243,020
2004	361,884,194	24,444,319	355,773,114	618,000,000	262,226,886
2003	361,899,291	24,444,254	355,788,228	628,000,000	272,211,773
2002	361,913,434	N/A	N/A	N/A	N/A

238. Integrating the ICC loan loss and the CoServ loan loss fraudulently reported into **Members' Equity** as reported results in the adjustments set forth in the following table.

Column	1	2	3	4	5	6	7
	Members' <u>Equity</u>	<u>ICC Adj.</u>	CoServ <u>Adj.</u>	CoServ Foreclosed <u>Ass. Adj.</u>	Actual Members' <u>Equity</u>	Over- <u>statement</u>	<u>%</u>
2009	604,316	(305,000)	(144,643)	(55,525)	99,148	(505,168)	509.51%
2008	613,082	(400,000)	(168,349)	(63,539)	(18,806)	(631,888)	-3360.06%
2007	566,286	-	(190,275)	(69,379)	306,632	(259,654)	84.68%
2006	545,351	-	(213,260)	(69,379)	262,712	(282,639)	107.59%
2005	523,583	-	(238,243)	(69,379)	215,961	(307,622)	142.44%
2004	483,126	-	(262,227)	(69,434)	151,465	(331,661)	218.97%
2003	454,376	-	(272,212)	(80,311)	101,853	(352,523)	346.11%

Column 1 is "Members' Equity" as reported in Item 6 of CFC's SEC filings. (2009 10K, p. 17, FYs 05-09 & 2006 10K, p. 16, FYs 03-04). Columns 2 and 3 are adjustments to Members' Equity to reflect the reporting of the false or bloated ICC and CoServ loan balances. Column 4 assumes the CoServ foreclosed assets are overstated and such overstatement is reduced to the

extent CFC recognized impairments to foreclosed assets. Column 5 is the corrected Members' Equity and Columns 6 and 7 qualify the overstatement in reported Members' Equity.

239. Integrating the ICC loan loss and the CoServ loan loss fraudulently reported into **Total Equity** as reported results in the adjustments set forth in the following table.

Column	1	2	3	4	5	6	7
	Total <u>Equity</u>	<u>ICC Adj.</u>	CoServ <u>Adj.</u>	CoServ Foreclosed <u>Ass. Adj.</u>	Actual Total <u>Equity</u>	Over- statement	%
2009	508,938	(305,000)	(144,643)	(55,525)	3,770	(505,168)	13398.27%
2008	665,965	(400,000)	(168,349)	(63,539)	34,077	(631,888)	1854.29%
2007	710,041	-	(190,275)	(69,379)	450,387	(259,654)	57.65%
2006	784,408	-	(213,260)	(69,379)	501,769	(282,639)	56.33%
2005	764,934	-	(238,243)	(69,379)	457,312	(307,622)	67.27%
2004	695,734	-	(262,227)	(69,434)	364,073	(331,661)	91.10%
2003	930,836	-	(272,212)	(80,311)	578,313	(352,523)	60.96%

Column 1 is "Total Equity" as reported in Item 6 of CFC's SEC filings. (2009 10K, p. 17, FYs 05-09 & 2006 10K, p. 16, FYs 03-04). Columns 2 and 3 are adjustments to Total Equity to reflect the reporting of the false or bloated ICC and CoServ loan balances. Column 4 assumes the CoServ foreclosed assets are overstated and such overstatement is reduced to the extent CFC recognized impairments to foreclosed assets. Column 5 is the corrected Total Equity and Columns 6 and 7 qualify the overstatement in reported Total Equity.

240. The overstatements in Members' Equity and Total Equity by CFC are intentional acts which are material.

CFC's Other Related Reporting & Accounting Fraud

241. CFC's accounting and reporting fraud is pervasive and goes far beyond the averments set forth above regarding:

- a. The embezzlement scheme which is described in paragraph 28 thru paragraph 92, inclusive;

b. The Segment Misreporting Methodology directly related to the embezzlement scheme which renders meaningless GAAP mandated disclosure which is described in paragraph 38 thru paragraph 92, inclusive;

c. The “single entity” accounting presentation first predicated upon an unlawful voting arrangement and which is necessary to avoid disclosure and accounting for CFC’s liability to RTFC for the embezzlement scheme which is described in paragraph 93 thru paragraph 115, inclusive;

d. The non-compliance with the “Fair Value” GAAP mandated disclosure which is neutered or rendered meaningless in CFC’s purported disclosure which is described in paragraph 116 thru paragraph 129, inclusive;

e. CFC’s Loan Loss fraud related to misreporting the CoServ Loan Loss which is described in paragraph 132 thru paragraph 165, inclusive; and

f. CFC’s Loan Loss fraud related to misreporting the ICC Loan Loss which is described in paragraph 166 thru paragraph 235, inclusive.

What follows is some of the additional fraud that pertains to CFC’s Financial Statements.

242. CFC did not disclose in CFC’s filings the extent of CFC’s investment, direct and indirect, in CoServ to facilitate the CoServ reorganization. Upon information and belief, such investment in CoServ was \$50 Million, including the \$10 Million from CoBank, which was material.

243. CFC did not disclose to the investing public and the government that the Telecom Assets, valued at \$28 Million, were received in complete satisfaction of CFC loans of at least⁶⁷ \$262 Million. Additionally, CFC assumed at least another \$6.5 Million of expenses to Telecom’s

⁶⁷ CFC invested another \$26.892 Million in Telecom after the execution of the Master Restructuring Agreement with CoServ.

unsecured investors making **CFC's loss on Telecom loans made to CoServ of \$240.5 Million.**

244. Upon information and belief, CFC assumed CoServ's unfunded obligation to fund Developers Loans and CFC intentionally failed to disclose to the investing CFC's obligations for future investment in the foreclosed assets.

245. Upon information and belief, CFC made further investments in foreclosed assets in a fashion to evade disclosure to the investing public by either or both:

a. Making loans which are not booked or reflected as an additional investment in foreclosed assets; and/or

b. Making investments in wholly-owned CFC subsidiaries which investments are consolidated with CFC where the investments in foreclosed are reflected in CFC's assets without a corresponding increase in the investment in foreclosed assets.

246. For instance, CFC loaned an additional \$26.9 Million to CoServ's Telecom subsidiaries from the date of CoServ's Master Restructuring Agreement dated March 15, 2002 and the CoServ Telecom subsidiaries bankruptcy November 31, 2001 (an 8 and ½ month period). Nevertheless, CFC does not reflect having invested a dime in CoServ's Telecom assets though holding such assets from December of 2002 until sold in October 27, 2003 (a 10 month period) and in fact, CFC recorded a gain of \$2 Million on said sale.

247. With respect to ICC, CFC never disclosed to the investing public and the government the filing of a 2003 foreclosure action⁶⁸ in Virginia against both ICC and Vitelco on March 13, 2003. *See* CASE #: 1:03-cv-00277-LMB, U.S. District Court, Eastern District of Virginia.

248. CFC never disclosed to the investing public and the government that the 2003 and 2004 foreclosure suits were instigated against ICC because Jeff Prosser caused ICC to seek an

⁶⁸ This was commenced because Jeff Prosser raised and pressed the Embezzlement Scheme.

explanation after stumbling across the Embezzlement Scheme.

249. CFC has never disclosed to the investing public and the government that in May of 2004, Jeff Prosser threatened RTFC with a derivative suit over the Embezzlement Scheme.

250. CFC did disclose to the investing public and the government the filing of summary judgment motion in RTFC's foreclosure action against ICC claiming and stating:

On January 11, 2005, RTFC served a motion for partial summary judgment in the loan default action. In its motion, which is supported by a statement of undisputed facts, RTFC seeks partial summary judgment as to ICC's liability for certain events of default alleged in the amended complaint. In addition, RTFC seeks summary judgment dismissing ICC's defense and counterclaim for reformation of the loan agreement, and ICC's counterclaim for anticipatory repudiation in connection with the alleged obligation to fund ICC's settlement of the Greenlight litigation.

See 10Q for Q/E 11/30/2004, FN 15e, p. 25.

CFC was presenting the foreclosure as a *fait accompli*.

251. CFC never disclosed to the investing public and the government the May 20, 2005 testimony in deposition by FRANK E. VAUGHAN, CFC's assistant general counsel, regarding the RTFC – ICC 2001 Loan Agreement (the "2001 Loan Agreement") stating:

Q. Can you sit here today and tell me that each and every word on the physical loan document that Mr. Prosser signed is identical to the words in the loan documents, the four versions of the loan documents that Mr. Siegfried asked you about? That's a yes or no question, sir.

A. No.

Q. Your answer is no?

A. Yes.

Mr. Vaughan testified that the 2001 Loan Agreement used in the 2004 Foreclosure Action by RTFC against ICC was not the authenticate Loan Agreement.

252. Additionally to the public notice of the summary judgment filing, CFC had publicly touted in the Virgin Islands and in other publications that there had been 31 defaults by ICC.

253. CFC never disclosed to the investing public and the government that on

September 9, 2005, under the threat of seeking sanctions, RTFC signed a stipulation dismissing approximately 16 of the 31 alleged defaults.

254. CFC never disclosed to the investing public and the government that on December 29, 2005, the Virgin Islands Federal District Court **denied RTFC's Motion for summary judgment** stating: "The Court finds that there are genuine issues of material facts in this matter and that RTFC has failed to meet its burden." In so deciding the Court cited the following footnote in the opinion:

For example, each of RTFC's claims is dependant on the existence of a specific loan document, which outlines the obligations of ICC as a borrower and what constitutes a default. While the loan transaction is not in dispute, the parties dispute the very document that RTFC claims reduced the loan transaction and ICC's obligation to a writing.

Thus, RTFC failed to authenticate the 2001 Loan Agreement.

255. CFC never disclosed the reason that its Summary Judgment Motion was denied only stating:

On October 31, 2005, ICC moved to further amend its answer to deny the authenticity of the loan agreement in the loan default action. RTFC opposed that motion and filed its response on December 21, 2005. That motion has not yet been ruled upon by the Court. On December 29, 2005, the Court denied RTFC's motion and denied in part and granted in part ICC's motion, holding that some but not all of RTFC's allegations of default should be dismissed.

See 11/30/2005 10Q, FN 13e, p. 26

In fact, CFC's disclosure to the investing public and the government is misleading because the denial of the summary judgment was premised upon the authenticity issue and RTFC presented the authenticity issue as a separate issue not yet decided.

256. After proclaiming the foreclosure a *fait accompli* and anticipating the foreclosure being permanently stymied because RTFC's foreclosure was premised upon an unauthenticated 2001 Loan Document (the "False 2001 Loan Document") having admitted the original had been destroyed, RTFC entered into the Intercreditor Agreement whereby RTFC agreed to payments to

a subordinate creditor, the Greenlight Defendants, of \$27.5 Million, even if there was no recovery on the Loan and further, RTFC subordinated any claim against Jeff Prosser's personal assets.

257. CFC has never disclosed to the investing public and the government the existence of, nor RTFC's obligations pursuant to (the \$27.5 Million obligation), the Intercreditor Agreement to the Greenlight Defendants.

258. Further, CFC has never disclosed that the Intercreditor Agreement was motivated because of ICC's discovery of the False 2001 Loan Document.

259. While CFC disclosed the existence of the 2006 Settlement Agreement, CFC never disclosed to the investing public and the government that Greenlight and RTFC had agreed to accept \$402 Million for claims that exceeded \$650 Million.

260. CFC never disclosed to the investing public and the government that in the summer of 2007, Jeff Prosser obtained a financing commitment from Silver Point Finance, LLC for \$620 Million with the intent of paying RTFC and Greenlight collectively the \$402 Million as per the 2006 Settlement Agreement.

261. CFC never disclosed to the investing public and the government that Greenlight and RTFC, acting in concert, rejected the \$402 Million payment knowing it represented the best valuation of ICC (and best recovery) and stated in open Court:

Mr. Galardi for Greenlight:

"We can also take the testimony from Mr. Augustine, who was absolutely clear. He believes that this financing is the highest valued. He also said that the market check, back a year ago on the sale, may be the highest value. What's going on is they believe that that's the highest value, we have to take it. We don't want to take it. It's not a paternalistic situation. The fact of the matter is, if this is the highest value and if we're unwise for letting a sale process go forward, **we're willing to live with the risk**. The **RTFC is willing to live with the risk**, we just want the process free of the one gentleman who seems to control all of this, Mr. Prosser. And that's really the thrust of this motion." (Emphasis added)

See August 3rd Hearing Transcript, case no's 06-30007; 06-30008; & 06-30009, Transcript, pgs. 36-7, L 16 thru L2.

Mr. Gerber for RTFC:

“We want him out of control of the process. The creditors don’t believe what he offered is good enough as a matter of law and as a matter of fact and you can’t compel us to accept that proposal, and we choose not to do so voluntarily. And what’s remarkable as the Court has pointed out, maybe we’ll get less money doing it our way, **that’s a possibility, but that’s our risk. There isn’t anybody else at risk that will get less money.** We’ll make sure that there’s a well financed telephone company, the people in the Virgin Islands will have their telephone company. **But if we get less out of this, it’s our risk to let the trustee do that.**” (Emphasis added)

See August 3rd Hearing Transcript, case no's 06-30007; 06-30008; & 06-30009, Transcript, p. 40, L 12 thru L21.

Thus, RTFC assumed the risk of loss after testimony from Mr. Augustine, a managing director of Rothschild, the financing represented the highest value the assets would attract.

262. CFC/RTFC rejected the \$402 Million, as stated in open Court, that “We want him [Jeff Prosser] out of control of the process” and “we just want the process free of the one gentleman who seems to control all of this, Mr. Prosser.”

263. RTFC never disclosed to the investing public and the government that CFC’s motivation in rejecting the \$402 Million called for in the 2006 Settlement Agreement was grounded in personal reasons (CFC’s vendetta against Jeff Prosser) and not in fundamental economics – what provides the best payout to RTFC and thus, the investors.

264. RTFC never disclosed to the investing public and the government that CFC’s \$402 Million gamble, where the same assets, marketed first by Alvarez and Marsal and then by Houlihan Lokey, couldn’t attract a bid that would recover a dime of recovery - a \$402 Million gamble that went against RTFC.

265. RTFC’s financial disclosure regarding the value of the Group I Assets subject to the Credit Bid affirmatively and intentionally misleads the investing public and the government **by stating -**

In late November 2008, we engaged an outside consultant to renew the valuation of ICC that had been performed during the summer of 2008. The update of the appraisal of ICC assets was triggered by the changing economic conditions that occurred during our second quarter of fiscal year 2009, especially the tightening of the credit markets, coupled with indicators we were receiving from potential third party investors responding to the upcoming auction of the ICC assets. As a result of this new information, we recorded an addition to the provision for loan losses of \$114 million during the quarter ended November 30, 2008. We believe that, as a result of this additional provision for losses and an additional \$13 million provision in the third and fourth quarter, we have adequately reserved against losses associated with ICC at May 31, 2009.
See FY 2009 10K, p. 40

while not intentionally disclosing –

- a. Alvarez and Marsal (“Alvarez”) failed to find a buyer for the Group I Assets;
- b. That Houlihan Lokey (“Houlihan”) could not attract a buyer without a financing package from RTFC;
- c. That the offers attracted after nearly a year of marketing would result in no recovery on the ICC loan;
- d. That Houlihan testified as to thoroughness of the marketing process;
- e. Houlihan testified that the offers which produced no recovery whatsoever represented the fair valuation of the market;
- f. Houlihan was RTFC’s expert;
- g. That the Bankruptcy Court found that the marketing process was thorough and established the value of the ICC assets;
- h. CFC’s credit bid required the investment of tens of millions (good money after bad) which CFC would be unlikely to recover; and
- i. Other factors such as that the Virgin Islands Public Services Commission is demanding capital investment of \$100 Million over the next five years by any new

owner.

266. CFC has only received \$28.5 Million from the ICC estate (before RTFC's \$27.5 Million payment to Greenlight Defendants) and has no prospect for recovery from Jeff Prosser's estate, however, CFC continuously states for the purpose of misleading the public that:

The Group 2 Assets and Group 3 Assets were sold in December 2008 and May 2008, respectively, and in each case, the distribution of proceeds was approved by the Court and **resulted in a net recovery to us.** (Emphasis added)

See 2009 10K, FN 16d, p. 128.

CFC uses the phrase "**net recovery**" when \$1 Million received over and above RTFC's obligation to the Greenlight Defendants is overshadowed by:

a. The tens of millions CFC/RTFC have expended in professional fees (only a part of which were expensed as required by GAAP) related to Jeff Prosser since June 1, 2004 foreclosure;

b. The millions (estimated to easily exceed \$20 Million) CFC/RTFC will expend to pick up the unpaid administrative expenses of the ICC's Chapter 11 Estate; and

c. The investment to obtain regulatory approval of CFC's acquisition.

CFC is intentionally misleading the public and the government about financial consequences of the ICC foreclosure action.

267. CFC, consistent with its fraudulent reporting, has been misreporting the ICC Loan Balance having received, ignoring for this purpose a \$1.5 Million disbursement related to the sale of the 727 aircraft, the following payments:

	<u>Amount</u>	<u>Disbursements to RTFC</u>	
		<u>FY 2008</u>	<u>FY 2009</u>
Pissarro Painting	3,780,000	-	3,780,000
Bjerget House	7,547,463	7,547,463	-
Daily News Sale	5,245,500	-	5,245,500
Group 2 Assets Proceeds	<u>9,945,385</u>	<u>-</u>	<u>9,945,385</u>
	<u>26,518,348</u>	<u>7,547,463</u>	<u>18,970,885</u>

Thus, CFC/RTFC received \$7.5 Million in FY 2008 and another \$19 Million in FY 2009 from the Chapter 11 Estate: ICC asset sales.

268. GAAP is **unequivocal** in requiring that fees and expenses incurred in a troubled debt restructuring is a current expense item. FAS 15, ¶ 38, stated: “Legal fees and other direct costs incurred by a creditor to effect a troubled debt restructuring shall be included in expense when incurred.”

269. The ICC Loan Balance was reported to \$475 Million as of May 31, 2005, after RTFC unilaterally offset ICC’s unredeemed patronage capital and subordinated capital certificates during FY 2005. *See* 2006 10K, p. 35.

270. Giving effect to the recoveries received in FYs 2008 and 2009, the table below sets forth CFC’s reporting of the ICC Loan balance beginning with FY 2005:

	<u>Balance</u>	<u>Increase</u>	<u>Recoveries</u>	<u>Inc. (Decr.)</u>
FY 2005 (2005 10K, FN 14(e), p. 103)	475,000			
FY 2006 (2006 10K, p. 35)	488,000	13,000	-	13,000
FY 2007 (2007 10K, p. 35)	493,000	5,000	-	5,000
FY 2008 (2008 10K, p. 36)	492,000	(1,000)	7,547	6,547
FY 2009 (2009 10K, p. 37)	524,000	32,000	18,971	50,971

The table above takes the ICC Loan Balance reported for the FY, sets out in the next column the increase or decrease in the loan balance from the previous years, then sets out recoveries (which should have decreased the loan balance) and the last column reflects expenses capitalized by rolling such expenses into the ICC Loan Balance. For example FY 2008 actually reflects a \$1 Million decrease in the ICC Loan Balance from FY 2007; however, there were \$7.5 Million in recoveries so CFC capitalized in the ICC Loan Balance \$6.5 Million of expenses that should have been charged as an expense.

271. While the FY 2009 reflects capitalization of \$50.9 Million, a portion of the increase, \$30 Million, is explained by CFC’s purchase of Vitelco’s Preferred Stock. Thus, in FY

2009, CFC capitalized in the ICC Loan Balance at least \$20.9 Million that should have been expensed – a material amount.

272. With respect to FY 2009, the capitalization of the Preferred Stock is a material distortion because the ICC Loan Balance after capitalization of the Preferred Stock should be \$30 Million. The ICC Loan Balance should have been charged-off reflecting the fact that it is beyond probable, it is an established fact; the market value of the ICC Assets is zero.

273. The improper capitalization of expenses into the ICC Loan Balance represents part of CFC's legal costs as admitted by CFC in the following statement: "Loans outstanding to ICC continue to increase due to accrued legal costs associated with ongoing litigation to recover the outstanding loan balance." *See* CFC's 10Q for Q/E 8/31/2007, FN 13e, p. 23. The capitalization of legal expenses is an intentional and material departure from GAAP (FAS 15, ¶ 38) to manipulate CFC's reported income.

274. CFC had the following statements in the FY 2006 10K which is not in the FY 2009 10K:

a. The Company has demonstrated the ability to pass on its cost of funding to its members through its ability to consistently earn an adjusted TIER equal to or in excess of the minimum 1.10 target. *See* p. 26.

b. The Company has demonstrated the ability to pass on its cost of funding to its members through its ability to consistently earn an adjusted TIER in excess of the minimum 1.10 target. The Company has earned an adjusted TIER in excess of 1.10 in every year since 1981. *See* p. 31.

c. CFC's goal is to maintain a minimum adjusted annual TIER of 1.10. *See* p. 50.

275. Without explanation and contrary to the plain English requirements of securities law, CFC stopped all such disclosures regarding an adjusted TIER target or performance ratio of 1.10 after FY 2006 which was a mainstay of CFC's disclosure for FYs 2006 and earlier. It is as if those requirements never existed.

276. CFC stopped such disclosure because CFC, even with accounting fraud, could not assure it would meet the 1.10 performance guideline.

277. If CFC's adjusted TIER ratio for FY 2006 is trued-up (corrected) by deducting the \$13 Million capitalized in the 4th quarter of FY 2006, CFC's **TIER Ratio for FY 2006 would be 1.09** (rather than the 1.11 reported) or less than CFC's target ratio in FY 2006. Thus, CFC only met the TIER ratio for FY 2006 target by departing from GAAP.

278. CFC should have further noted that the 2006 income included \$43.4 Million from the proceeds from the sale of CFC's office building. Without the inclusion of the income from the building sale, an extra-ordinary event, CFC would have had an adjusted **TIER Ratio of 1.04** (rather than the 1.11 as reported).

279. If CFC's adjusted TIER ratio for FY 2009 is trued-up (corrected) by deducting the \$20.971 Million capitalized during FY 2009, **CFC's FY 2009 TIER Ratio would be 1.08** or less than CFC's target ratio set forth in FY 2006.

280. The FY 2009 10K has two other disclosures which demonstrate CFC's manipulation of the adjusted TIER Ratio which are –

a. On page 19, the 10K, in discussing FY 2009 as compared to FY 2008 stated that there was "... \$86 million increase in derivative cash settlements."

b. On page 30, the 10K stated that CFC "... terminated these derivative instruments primarily to increase our adjusted equity base for the fiscal year **to partially**

offset losses from the quarter ended November 30, 2008 primarily due to the increase in the loan loss provision noted above.” (Emphasis added)

The foregoing is an **admission by CFC** in the 2009 10K (a few lines repeated twice in a 133 page document) that *derivative cash settlements* were manipulated, in transactions outside the ordinary course of business⁶⁹, to increase CFC’s “adjusted equity base”. CFC does not disclose that the extra-ordinary derivative cash settlements were necessary to comply with CFC’s TIER Ratio.

281. In a material departure from GAAP, CFC did NOT report the cash derivative settlements as ‘extraordinary income’ derived from derivative cash settlements as an extraordinary item of income as required by events which are distinguished by their **unusual nature** and by the **infrequency of their occurrence**. This is augmented by the fact that CFC represents that the “derivative forward value and foreign currency adjustments do not represent cash inflows or outflows to us during the current period” and thus are excluded from management’s performance criteria - however, as demonstrated such is not the case when CFC exercised the option to terminate favorable derivative contracts to offset loan loss recognition.

282. Further highlighting the extraordinary nature of the derivative cash settlements is the fact that derivative cash settlements were negative in the 4th quarter (meaning that CFC was paying out) going from \$117 Million as of February 28, 2009 (10Q, Q/E 2/28/09, p.4) to \$113 Million (2009 10K, p. 92) due in a large part to the event of terminating favorable (profitable) derivative contracts to produce income to offset the loan loss partially recognized with respect to

⁶⁹ CFC’s FY 2002 10K, p. 32, “It is CFC’s policy to hold derivatives to maturity.”; CFC’s FY 2003 10K, p. 92, “CFC has not invested in derivative financial instruments for trading purposes in the past and does not anticipate doing so in the future.”; and CFC’s 2008 10K, p. 103, “The Company is neither a dealer nor a trader in derivative financial instruments. The Company utilizes derivatives such as interest rate and cross currency interest rate exchange agreements to mitigate its interest rate risk and foreign currency exchange risk.”

the ICC Loan Loss (which is wholly inadequate).

283. Truing up the FY 2009 Adjusted TIER Ratio for both the capitalized expenses of \$20.971 Million and the \$86 Million⁷⁰ in derivative cash settlements accelerated to “offset losses ... primarily due to the increase in the loan loss provision” CFC would have reported an **adjusted TIER Ratio for FY 2009 of .97 or less than 1.0** – the minimum figure to make interest payments (not debt service).

284. The foregoing manipulations with respect to FY 2009 Income and adjusted TIER Ratio, especially considering that CFC could not even achieve an adjusted TIER Ratio of 1.0, is material misrepresentation and a material omission.

285. CFC’s intentional and improper capitalization of expenses into the ICC Loan Balance, CFC’s false proclamation for FY 2006 that CFC met the minimum adjusted TIER Ratio of 1.10 (and had done so since 1981), CFC’s failure to not disclose that CFC would not (even with the capitalization of ICC legal expenses) meet the 1.10 adjusted TIER ratio in FY 2006 but for the sale of the building, and CFC’s manipulation of the TIER Ratio in FY 2009, EACH represent material misstatements and a material omission.

286. CFC has directly lied to analysts in investor telephone calls regarding recoveries from the Group II Assets. In the investor telephone conference dated January 22, 2009, Defendant Lilly had the following exchange with an analyst:

“JIM FERGUSON: Good morning, Steve. On the -- referring to page 16, the group 2 asset sale at ICC. Can you tell us, is it public information as to what the sale proceeds were?

MR. LILLY: It is not public information at this time, and as I indicated earlier to someone who asked a question, we are working through the distribution of the net sale proceeds with the Chapter 11 trustee.

JIM FERGUSON: Okay. Who is the trustee, and are there any public documents regarding the trustee or the sale, or is it completely private and

--

⁷⁰ On page 30 CFC acknowledges a figure of \$97 Million.

MR. LILLY: Again, the net proceeds are still under discussion --

JIM FERGUSON: Yeah.

MR. LILLY: --with the Chapter 11 trustees, so there's no public documents with regard to the --

JIM FERGUSON: The trustee doesn't have to file anything- with the court?

MR. LILLY: Once those discussions have been settled then there will be a filing with the court.

JIM FERGUSON: Okay. Are there any other creditors who are -- (inaudible) pursue with NRU --with the RTFC regarding those proceeds for the group 2 assets, or are you the only creditor?

MR. LILLY: Well, we are the only senior-secured creditor with regard to the distribution of those assets.

JIM FERGUSON: So what's the nature of any discussions? I mean, shouldn't it all go to NRUC?

MR. LILLY: We are under discussion with the trustee as to how to apply those proceeds that have been received.

JIM FERGUSON: But the application should be all to RTFC, shouldn't it?

MR. LILLY: We're in a bankruptcy court setting, and in that regard the court has directed the Chapter 11 trustee and National Rural, which is us acting on behalf of RTFC, to review and discuss how the application of the net proceeds."

287. Defendant Lilly intentionally misdepicts the sales process and sales price for the Group II Assets as confidential when --

a. The Trustee publicly filed with the Bankruptcy Court the notice of the sale which set forth the sales price of the Group II Assets. *See* Case 3:07-bk-30012-JKF Doc 1033 Filed 12/09/08

b. The actual contract was attached as Exhibit 1 to the above filing. *See* Case 3:07-bk-30012-JKF, Doc 1033-1, Filed 12/09/08, Desc Exhibit 1 Part 1: Purchase Agreement

c. On December 9, 2008, the St. Thomas Source, an internet paper, publicly filed an article about the Group II Assets titled "Prosser's French Properties Bring Only \$22 Million."

d. The Bankruptcy Court after hearing approved the sale in a publicly filed Court order dated December 19, 2008. *See* Case 3:07-bk-30012-JKF, Doc 1053, Filed 12/19/08

Each of the above took place more than one month **before the Investor Call**.

288. In the 3rd quarter conference call CFC again misleads with the following information presented as slide 21 of the presentation –

- Recoveries of the Innovative Communication Corporation (ICC) bankruptcy case continue to accelerate. Asset sale processes are under way:
 - ...
 - » Group 2 assets: (Consisting of assets and stock in ICC subsidiaries operating in France, certain Caribbean territories and Netherlands Antilles.) Sold in December 2008 with proceeds totaling \$23.9 million received.

CFC fails to disclose two important facts to investors while intentionally presenting the proceeds from estate's sale of the Group II Assets as CFC's recovery. Those two important facts are:

- a. CFC only received \$9.945 Million of the \$23.9 Million; and
- b. The Trustee, the Trustee's consulting firm, and the Trustee's lawyers had millions in approved but unpaid fees; in fact, more unpaid fees than the \$9.945 Million paid out to CFC.

289. Under information and belief, CFC received a payout of the \$9.945 Million from the sale of the Group II Assets only because CFC agreed to assume and pay the administrative expenses related to the management of ICC, the Chapter 11 Estate, as part of the credit bid. Thus, CFC is intentionally manipulating public investors and the government.

290. A mainstay (every annual and quarterly presentation as well as special presentations) of CFC's presentations to investors and public reporting is this statement made in the 2009 10K, p.39, which is: "Since inception in 1969, charge-offs totaled \$217 million and recoveries totaled \$34 million for a net loan loss of \$183 million. Management believes that the

allowance for loan losses is adequate to cover estimated probable portfolio losses.” As demonstrated by CoServ and ICC catastrophic loan losses, it is an unmitigated lie – a misrepresentation of extreme importance and relevance given CFC’s business of lending.

291. Under coop agency and price adjustment legal theories, CFC’s income belongs to CFC’s members.

292. RTFC is a member of CFC and as discussed above RTFC is materially dependent upon CFC’s patronage income which constitutes the majority of RTFC’s income.

293. Incongruently, RTFC’s financial statements which are always dated usually a month or so before the date of CFC’s financial statements reflect as an accrual and therefore as income the patronage capital allocation from CFC for the then current year. RTFC equity as reflected in the consolidated financial statements always includes current year’s patronage income allocation.

294. It would be improper to accrue RTFC’s patronage income unless, CFC’s board declared the amount of the patronage income and approved the allocation among CFC’s members including RTFC.

295. However, CFC never accrues in the current FY 10K the CFC’s board action declaring a cash patronage dividend to its members. To do so, would materially decrease equity.

296. The payment of cash patronage dividends for the current year paid in the 1st quarter in accordance with CFC’s customary practice is material.

<u>Fiscal Year</u>	<u>As Reported</u>		<u>Cash Patronage Dividend</u>	<u>Percentage of Reported</u>	
	<u>Members' Equity</u>	<u>Total Equity</u>		<u>Members' Equity</u>	<u>Total Equity</u>
2008	613,082	665,965	85,526	13.95%	12.84%
2007	566,286	710,041	85,494	15.10%	12.04%
2006	545,351	784,408	84,247	15.45%	10.74%
2005	523,583	764,934	72,912	13.93%	9.53%

297. CFC’s failure to report cash patronage dividends declared before the date of

issuance of the Auditor's Report either in the balances for the fiscal year (as reported for RTFC) reported in the balance sheet is materially misleading – overstating Total Equity and Members Equity.

298. Other evidence of CFC's insolvency and cash flow difficulties which is not discussed is the fact that CFC always, as a matter of practiced paid cash patronage dividends in the first quarter (August 31st) for the previous yearend (May 31st) excepting FYs 2007, 2008 and 2009 which the 10Qs reflect a payable for the quarter ending August 31, 2007 of \$85 Million (related to FY 2007); a payable for the quarter ending August 31, 2008 of \$85 Million (related to FY 2008); and a payable for the quarter ending August 31, 2009 of \$41.4 Million (related to FY 2009).

299. Upon information and belief, in FY 2009, for the first time, CFC reported the purchase and resale of tax-exempt bonds issued by CFC's members:

At May 31, 2009, we were the guarantor and liquidity provider for \$643 million of tax-exempt bonds issued for our member cooperatives. During the year ended May 31, 2009, we purchased \$72 million of these securities pursuant to our obligation as the liquidity provider. At May 31, 2009, all tax-exempt bonds we held had been redeemed or repurchased by third-party investors with no gain or loss on the transactions.
SEE 2009 10K, p. 8.

300. Upon information and belief, CFC has many other troubled loans or troubled guarantees that, like ICC until the foreclosure commenced, are not reported as restructured or non-performing loans only because of manipulation by CFC such as lending additional funds to avoid defaults.

301. CFC's form of "watered stock" is members' subordinated certificates. CFC improperly records subscribed and unissued 'membership subordinated certificates' (of \$14 Million for FY 2009) and subscribed and unissued 'loan and guarantee subordinated certificates' (of \$41 Million for FY 2009) within the total of members' subordinated certificates and uses the

sums to average down interest rates CFC reports paying on members' subordinated certificates.

302. CFC touts the issuance of Member Capital Certificates in the FY 2009 10K and many recent press releases. For example the FY 2009 10K, on page 22, states:

We [CFC] began offering member capital securities, unsecured and subordinate voluntary debt investments, to members in December 2008. As of May 31, 2009, a total of \$278 million of member capital securities had been sold. Subsequent to our fiscal year-end, we met our target of issuing at least \$300 million of member capital securities. After the end of the fiscal year through August 7, 2009, an additional \$53 million of member capital securities were sold bringing the total to \$331 million.

The following is intentionally misleading because CFC fails to mention –

a. CFC pays 7.5% interest rate on Member Capital Certificates which is over 150 basis points higher (more expensive) than the weighted average interest rates obtained by CFC on current loans pursuant to the table on page 107 of the FY 2009 10K; and

b. Upon information and belief, CFC is financing the purchase by members of the Member Capital Certificates which means positive leverage for the members but negative leverage for CFC, as with subordinated deferrable debt and which nearly occurs with Membership subordinated certificates.

This is akin to a retailer advertizing increasing number of units sold while not mentioning that each unit is being sold as a loss.

303. Upon information and belief, CFC manipulates the reporting of cash settlements for derivatives contracts as CFC manipulates the reporting with respect to members' loan losses and with respect to the Embezzlement Scheme.

304. CFC estimates the value of derivative contracts stating because “there is not an active secondary market for the types of derivative instruments we [CFC] use, we obtain market quotes from our dealer counterparties.” Upon information and belief, CFC intentionally

misreports the value of derivative contracts overstating CFC's equity⁷¹.

305. CFC's financial statements and SEC filings taken as a whole are materially misleading, contain many material omissions, are materially misleading and are designed to mislead investors as to CFC's leverage and loan margins.

306. CFC is a tax-exempt organization engaged in the for-profit business of telephone lending with the profit derived through embezzlement and whose existence is perpetuated through systemic accounting fraud.

CFC's/RTFC's Historical Relationship with Plaintiffs

307. "Rural Telephone Finance Cooperative ("RTFC") was incorporated as a private cooperative association in the state of South Dakota in September 1987." *See* CFC's 2009 10k, FN 1a, p. 96.

308. ICC's predecessor, Atlantic Tele-Network, Co. (referred to as "ICC"), and the Virgin Islands Telephone Company ("Vitelco"), under information and belief, were the first borrower from RTFC and thus RTFC's first member other than CFC's unlawful membership interest.

309. The December 30, 1987 RTFC Loan to Vitelco & ICC was for \$104, 444,444.

310. Under information and belief, RTFC was established from the beginning for the purpose of effecting CFC's Embezzlement Scheme by unlawfully making telephone loans as a **for profit** activity of CFC.

311. CFC's management changed when:

- a. Defendant Lilly became CFO of CFC and RTFC in 1994;
- b. Defendant Petersen became CEO of CFC and RTFC in 1995;
- c. Defendant List became General Counsel of CFC and RTFC in

⁷¹ CFC clearly intentionally misrepresents the Fair Value of members' loans.

1997; and

d. Defendant Evans became V.P. of operations for CFC and RTFC in 1997.

312. CFC's current management team is as follows:

Title	Name	Age	Held present office since
President and Director	Robert A. Caudle	59	2004
Vice President and Director	James P. Duncan	57	2004
Secretary-Treasurer and Director	Cletus Carter	63	2004
Governor and Chief Executive Officer	Sheldon C. Petersen	51	1995
Senior Vice President of Member Services and General Counsel	John J. List	57	1997
Senior Vice President and Chief Financial Officer	Steven L. Lilly	54	1994
Senior Vice President of Operations	John T. Evans	54	1997
Senior Vice President of Corporate Relations	Richard E. Larochelle	51	1998
Senior Vice President of RTFC	Lawrence Zawalick	46	2000
Senior Vice President of Credit Risk Management	John M. Borak	60	2002

The foregoing table is from CFC's 2004 10K, p. 79.

313. Under information and belief, the Embezzlement Scheme was CFC's reason for forming RTFC and has been ongoing since RTFC's formation in 1987. Simply, CFC has been embezzling (stealing) from RTFC and thus, ICC, since ICC's first loan in 1987.

314. Upon information and belief, CFC's Management Defendants, as they assumed control over CFC and RTFC, decided to:

- a. materially escalate the sums embezzled (stolen) from RTFC and thus ICC;
- b. as well as shift CFC's economic dependency to the Telephone Loan Portfolio.

315. Examining the years in which transparent Segment Information is available, that is FYs 2000 through 2004, inclusive, and adjusting for CFC Loan Loss Guarantee⁷² (for which RTFC was charged a fee), it is apparent that RTFC's contribution to CFC's Adjusted Net Margin (the number upon which CFC makes patronage allocations) is disproportionate to its loan

⁷² Applicable to FYs 2002 and later.

portfolio.

a. FY 2000 –

	Electric	Telecom	Other	Consolidated
Net Margin	<u>65,127</u>	<u>50,206</u>	<u>-</u>	<u>115,333</u>
Percentage	<u>56.47%</u>	<u>43.53%</u>		<u>100.00%</u>
RTFC Audited Income		<u>26,880</u>		
Cash Patronage Dividends				
Total			77,439	100.00%
RTFC (70% of RTFC's Income)	26,880	70%	<u>(18,816)</u>	24.30%
CFC & NCSC			<u>58,623</u>	<u>75.70%</u>

Thus, for FY 2000 Telecom (or telecommunications) loans (RTFC) which then constituted a 22.18% of the Total Loan Portfolio (“TLP”) contributed over 56% of the Combined Adjusted Net Margin while receiving 24.3% of the cash patronage dividends.

b. FY 2001 –

	Electric	Telecom	Other	Consolidated
Net Margin	<u>66,193</u>	<u>66,573</u>	<u>-</u>	<u>132,766</u>
Percentage	<u>49.86%</u>	<u>50.14%</u>		<u>100.00%</u>
RTFC Audited Income		<u>38,098</u>		
Cash Patronage Dividends				
Total			98,323	100.00%
RTFC (70% of RTFC's Income)	38,098	70%	<u>(26,669)</u>	27.12%
CFC & NCSC			<u>71,654</u>	<u>72.88%</u>

Thus, for FY 2001 Telecom (or telecommunications) loans (RTFC) which then constituted a 27.05% of the Total Loan Portfolio contributed nearly 50% of the Combined Adjusted Net Margin while receiving 27% of the cash patronage dividends.

c. FY 2002 –

	Electric	Telecom	Other	Consolidated
Net (loss) margin prior to cumulative effect				

	of change in accounting principle	22,551	56,322	-	78,873
Plus:	Minority interest	-	-	-	-
Less:	Derivative forward value	(30,804)	(11,074)	-	(41,878)
	Foreign currency adjustments	<u>44,892</u>	<u>16,138</u>	<u>-</u>	<u>61,030</u>
Adjusted Net Margin		36,639	61,386		98,025
Adj. For Guaranty Contract:					
	Reallocation of Loan Loss	(55,200)	55,200	-	-
	Reallocation of Other Loan Loss	-	-	-	-
	RTFC's Loan Guaranty Fee	<u>374</u>	<u>(374)</u>	<u>-</u>	<u>-</u>
Adj. Net Margin by Segment		<u>(18,187)</u>	<u>116,212</u>	<u>-</u>	<u>98,025</u>
		<u>-18.55%</u>	<u>118.55%</u>		<u>100.00%</u>
RTFC Audited Income			<u>26,816</u>		
Cash Patronage Dividends					
	Total			74,622	100.00%
	RTFC (70% of RTFC's Income)	26,816	70%	<u>(18,771)</u>	25.16%
CFC & NCSC				<u>55,851</u>	<u>74.84%</u>

Thus, for FY 2002 Telecom (or telecommunications) loans (RTFC) which then constituted a 25.32% of the Total Loan Portfolio contributed over 100% of the Combined Adjusted Net Margin while receiving 27% of the cash patronage dividends.

d. FY 2003 –

	Electric	Telecom	Other	Consolidated
Net (loss) margin prior to cumulative effect of change in accounting principle	466,659	185,311	-	651,970
Plus: Minority interest	-	-	-	-
Less: Derivative forward value	(567,564)	(189,648)	-	(757,212)
Foreign currency adjustments	<u>182,304</u>	<u>60,916</u>	<u>-</u>	<u>243,220</u>
Adjusted Net Margin	81,399	56,579	-	137,978
Adj. For Guaranty Contract:				
Reallocation: RTFC Loan Loss	(37,159)	37,159	-	-
Reallocation: Other Loan Loss	-	-	-	-
RTFC's Loan Guaranty Fee	<u>774</u>	<u>(774)</u>	<u>-</u>	<u>-</u>
Adj. Net Margin by Segment	<u>45,014</u>	<u>92,964</u>	<u>-</u>	<u>137,978</u>
	<u>32.62%</u>	<u>67.38%</u>		<u>100.00%</u>

RTFC Audited Income			<u>27,913</u>	
Cash Patronage Dividends				
Total			70,576	100.00%
RTFC (70% of RTFC's Income)	27,913	70%	<u>(19,539)</u>	27.69%
CFC & NCSC			<u>51,037</u>	72.31%

Thus, for FY 2003 Telecom (or telecommunications) loans (RTFC) which then constituted a 25.37% of the Total Loan Portfolio contributed over 67% of the Combined Adjusted Net Margin while receiving nearly 28% of the cash patronage dividends.

e. FY 2004 –

	Electric	Telecom	Other	Consolidated
Net (loss) margin prior to cumulative effect of change in accounting principle	(60,184)	(134,020)	(6,186)	(200,390)
Plus: Minority interest		1,989		1,989
Less: Derivative forward value	170,804	54,362	3,966	229,132
Foreign currency adjustments	<u>48,685</u>	<u>15,495</u>	<u>1,130</u>	<u>65,310</u>
Adjusted Net Margin	159,305	(62,174)	(1,090)	96,041
Adj. For Guaranty Contract:				
Reallocation: RTFC's Loan Loss	(145,861)	145,861	-	-
Reallocation: Other Loan Loss	(7,899)	-	7,899	-
RTFC's Loan Guaranty Fee	<u>1,019</u>	<u>(1,019)</u>	<u>-</u>	<u>-</u>
Adj. Net Margin by Segment	<u>6,564</u>	<u>82,668</u>	<u>6,809</u>	<u>96,041</u>
	<u>6.83%</u>	<u>86.08%</u>	<u>7.09%</u>	<u>100.00%</u>
RTFC Audited Income				<u>26,205</u>
Cash Patronage Dividends				
Total			77,755	100.00%
RTFC (70% of RTFC's Income)	26,205	70%	<u>(18,344)</u>	23.59%
CFC & NCSC			<u>59,412</u>	<u>76.41%</u>

Thus, for FY 2004 Telecom (or telecommunications) loans (RTFC) which then constituted a 22.66% of the Total Loan Portfolio contributed over 86% of the Combined Adjusted Net Margin while receiving less than 24% of the cash patronage dividends.

316. Below is a table of the gross monies borrowed by ICC and its affiliates from

RTFC.

	Original Amount	
Vitelco Loans:		
December 30, 1987	60,000,000	Vitelco Acquisition
September 9, 1999	(54,597,358)	Refinance
September 9, 1999	74,597,358	Refinance + New Money
April 4, 2003	<u>10,000,000</u>	Line of Credit
Total Vitelco	<u>90,000,000</u>	
ICC Loans:		
December 30, 1987	44,444,444	Vitelco Acquisition
December 30, 1997	18,315,789	Neil Prior
December 30, 1997	18,947,789	Daily News Acquisition
December 30, 1997	40,000,000	CATV Acquisitions
December 30, 1997	21,052,632	Margin Loans
April 3, 1998	18,421,053	STT CATV Acquisition
April 15, 1998	21,052,632	STM Cellular (2/3 interest)
April 15, 1998	6,842,105	STT Building Acquisition
September 9, 1998	32,315,790	STM Cellular & Banco Popular
September 16, 1998	63,157,895	Privatization
June 11, 1999	51,000,000	Martinique CATV Acquisition
September 9, 1999	13,684,211	Miscellaneous
January 7, 2000	62,500,000	Guadeloupe CATV
January 7, 2000	55,600,000	CapEx Lending other than Vitelco
August 27, 2001	<u>169,291,578</u>	Interest-only basis plus SCCs
Total ICC	<u>636,625,918</u>	
Total Vitelco & ICC	<u><u>726,625,918</u></u>	

The bracketed amount represents the remaining balance of the original loan which was refinanced.

317. The following table breaks the foregoing tables into three distinct time periods: (i) borrowings before December 30, 1997; (ii) borrowings between December 30, 1997 and August 30, 2001; and (iii) borrowings after August 31, 2001.

Borrowing before Split-off (Prior)	104,444,444
Borrowing 1997 thru 2000	442,889,896
Borrowing after 2001	<u>179,291,578</u>
Totals	<u><u>726,625,918</u></u>

Clearly, the largest ICC borrowing from RTFC took place in the middle period; that is, from December 30, 1997 through August 30, 2001. Thus, the largest ICC borrowing took place during CFC's FYs 1998, 1999, 2000, 2001, and 2002.

318. CFC's Management Defendants willingly provided the bulk of ICC's total borrowing to further enhance the benefits to CFC from the Embezzlement Scheme.

319. CFC's Management Defendants provided ICC with over 85% of ICC's Gross Loans from RTFC.

320. In June of 2001 ICC had a payment default to RTFC.

321. At the time of ICC's payment default, ICC had \$591 Million owed to RTFC.

322. On August 27, 2001, RTFC and ICC entered into a new loan agreement, the "**2001 Loan Agreement**", under which RTFC essentially placed ICC on an interest-only basis for two years by funding ICC's principal payments due over the next two years and further loaned ICC enough money to purchase additional subordinate capital certificates ("SCCs") to maintain a SCC to Loan ratio of 10%.

323. In a material departure from GAAP (generally accepted accounting principles) CFC did not report the ICC Loan as restructured, as required.

324. CFC did not report the ICC loan as restructured because of the CoServ loan problem.

325. The 2001 Loan Agreement had a call provision effective July 1, 2003 where, upon notice from RTFC (the "ICC Call Provision"), ICC would be required to pay all indebtedness outstanding to RTFC within 120 days of RTFC's notice.

326. Upon information and belief, in 2001 RTFC intended to exercise the call

provision and boot (kick) ICC out of RTFC on July of 2003 unless other problem loans would not allow CFC to then address the ICC loan.

327. In preparation for the exercise of the ICC Call Provision in 2001, RTFC made a decision, after the exercise of the 2001 Loan Agreement to **unilaterally and without notice alter the 2001 Loan Agreement**.

328. Frank E. Vaughan, CFC's Associate General Counsel, was at the time CFC's assistant general counsel and served as RTFC's assistant general counsel with the responsibility to draft the 2001 Loan Agreement.

329. The August 27, 2001 Loan Document was unilaterally altered by RTFC with the following sequence of events surrounding the execution of the 2001 Loan Document.

a. On or about August 24, 2001 (a Friday), Jeff Prosser received a Federal Express package with two copies of the 2001 Loan Agreement;

b. Mr. Prosser executed both copies of the 2001 Loan Agreement and returned both⁷³ copies of the signed agreement to RTFC by express mail as instructed;

c. Because of a pending SEC deadline⁷⁴ (the filing⁷⁵ of CFC's FY 2001 10K) Jeff Prosser had the corporate seals sent from the Virgin Islands to RTFC for delivery Monday, August 27, 2001;

d. It is undisputed (established under oath) that Defendant Vaughan took the signature pages from the authenticate 2001 Loan Agreement and attached the signature pages to a different version of the 2001 Loan Agreement (the **"False 2001 Loan**

⁷³ RTFC was to assemble the 2001 Loan Agreement and related documents, affix the corporate seals thereto, and mail a fully executed set to Jeff Prosser.

⁷⁴ RTFC represented that it could not file the 2001 10K without execution of the 2001 Loan Agreement.

⁷⁵ The 2001 10K was filed on September 29, 2001, two days after the execution of the 2001 Loan Agreement.

Agreement”);

e. It has been established under oath that RTFC destroyed the original and ALL copies of the Authentic 2001 Loan Agreement; and

f. Defendant Vaughan ultimately sent out a fully executed version of the False 2001 Loan Agreement misrepresenting that such was the original version of the 2001 Loan Agreement executed by Jeff Prosser with minor revisions; the correction of typos.

330. All told, there were 7 versions of the 2001 Loan Agreement with Version 1 being the version actually executed by Jeff Prosser and Defendant Robin Reed (to which RTFC was authorized to affix, and did affix, the corporate seals), the Authenticate 2001 Loan Agreement. Versions 6 (sent to ICC) and 7 (retained by RTFC), the False 2001 Loan Agreement, constituted the versions under which the foreclosure was commenced.

331. Unknowledgeable about the False 2001 Loan Agreement, ICC continued to make the payments as agreed in 2001.

332. Over the course of mid to late calendar year 2002, Jeff Prosser sent several proposals with accompanying projections (projections of ICC’s cash flow) and proposals to resume amortization of the ICC Loan Balance; although, over an extended period of time.

333. RTFC never responded to Jeff Prosser’s proposals - neither affirmatively accepting any proposal nor proposing alternative terms and conditions. Jeff Prosser was essentially ignored.

334. Under information and belief, RTFC intended to call all of the ICC Loans by exercising the ICC Call Provision relying upon RTFC’s undiscovered fraud, the False 2001 Loan Agreement.

335. In the fall of 2002, ICC was informed by RTFC that ICC's cash patronage dividend for FY 2002 (payable usually the following January or February) was decreasing materially. The cash patronage dividend for FY 2001 had been over \$3 Million.

336. This decrease was taking place even though the Segment Information in the CFC's FY 2002 10K had disclosed the following:

a. RTFC's contribution for FY 2002 (ends May 31, 2002) to the Combined Adjusted Net Margin adjusted for CFC's loan loss indemnification exceeded \$116 Million, a material increase⁷⁶ over FY 2001;

b. Electric Loan Portfolio's contribution for FY 2002 (ends May 31, 2002) to the Combined Adjusted Net Margin was negative; and

c. RTFC's Net Margin for FY 2002, after allocations from CFC (net of the sum CFC embezzlement), was only \$26.8 Million, a decreased of nearly \$11.3 Million or 30% from FY 2001 RTFC Net Margin.

In a year when RTFC financially carried CFC, RTFC's share of the patronage allocations materially decreased.

337. Jeff Prosser directed Plaintiff Raynor and then ICC CFO, Joe Minor, to examine the SEC filings of CFC to determine why RTFC's income declined.

338. Independently, Joe Minor and Plaintiff Raynor came to the same conclusion: CFC had embezzled nearly \$101 Million just for FYs 2000, 2001, and 2002.

339. The foregoing figures underestimated the scope of the embezzlement by failing to account for or provide for the adjustment necessary to give force and effect to CFC's guarantee

⁷⁶ Without giving any recognition to the loan loss guarantee agreement, RTFC's income even though its unadjusted income increased substantially over FY 2001 even though RTFC's net margin decreased. CFC had materially increased sums embezzled in FY 2002.

agreement⁷⁷ whereby for a fee, CFC indemnified RTFC against all loan losses.

340. In early 2003 Jeff Prosser sought an explanation of the misallocation of patronage income allocation by CFC to RTFC.

341. After stonewalling Prosser's inquiries, in the face of a continued push for an explanation, RTFC commenced a foreclosure action on March 3, 2003 against ICC (the "2003 Foreclosure") even though there was no payment default. *See* U.S. District Court for the Eastern District of Virginia, CASE #: 1:03-cv-00277 (LMB).

342. The 2003 Foreclosure was based upon and required the submission of the False 2001 Loan Agreement to the Federal District Court for the Eastern District of Virginia, a commission of a crime.

343. The 2003 Foreclosure was also unlawful since CFC, acting through RTFC, was taking an action harmful to Jeff Prosser and others, for the purpose of preventing Jeff Prosser from providing to a law enforcement officer truthful information relating to the commission of numerous Federal offenses committed by CFC directly or indirectly related to the Embezzlement Scheme.

344. Out of the economic duress faced with the catastrophic and unlawful foreclosure proceedings and out of duty to the Virgin Islands ratepayers, Jeff Prosser capitulated to RTFC and sought a negotiated settlement.

345. CFC and ICC entered into an amendment of the False 2001 Loan Agreement whereby:

- a. the payment schedule of the ICC loan was restructured allowing amortization over a 30-year period (normal amortization term is 15 years);

⁷⁷ The indemnification agreement was the purported basis to reflect RTFC and CFC as a single entity for accounting purposes (filing combined financial statements) and thereby perpetuating and concealing the Embezzlement Scheme by not auditing and disclosing CFC's obligations to RTFC.

b. ICC was given a more favorable interest rate than enjoyed by other long-term Telecom Loans; and

c. CFC, RTFC, ICC, Jeff Prosser, and numerous other parties executed a Mutual Release dated April 4, 2003.

The RTFC – ICC loan relationship was governed by the False 2001 Loan Agreement with the amended loan amortization schedule.

346. CFC through RTFC used ICC loans wrongfully as leverage to:

a. suppress an issue, the allocation of patronage income, related solely to ICC's membership interest in RTFC and indirect membership through RTFC in CFC;

b. continue unabated CFC's Embezzlement Scheme and material misrepresentations and material omissions in CFC's SEC filings.

The foreclosure action was a retaliatory and extortionary action taken to suppress Jeff Prosser so that CFC may continue unabated by Prosser with the Embezzlement Scheme.

347. CFC never proffered an explanation to Jeff Prosser of the Embezzlement Scheme.

348. In shareholder litigation (the "Delaware Shareholder Litigation") related to a privatization of EmCom, on May 3, 2004, the Delaware Chancery issued a draft opinion (hereinafter the "Shareholder Litigation Decision") astronomically valuing Emerging Communications, Inc. stock (ICC's parent corporation) finding that such stock voluntarily sold for \$10.25 by minority shareholders was worth \$38.05.

349. The Shareholder Litigation Decision made three critical errors that resulted in the decision; in that,

a. Embedded in the Court's valuation, a business purchased within 6 months of the valuation date in an open market purchase, establishing the market value at \$27

Million, was valued by the Court at over \$130 Million (adding over \$9 a share to the share value);

b. The Courts failed to correct a material and fatal error⁷⁸ to the projections upon which the valuation was based where capital expenditures was more than \$13 Million less than depreciation expense (meaning a regulated entity would have increasing income on an increasing negative rate base – an impossible feat) (adding over \$13 a share to the valuation); and

c. The Court used a 8.69% discount rate when, under the Doctrine of Primary Jurisdiction, the Court was bound⁷⁹ by either (i) the Virgin Islands Public Services Commission allowed a 11.5% cost of capital or (ii) the Federal Communications Commission allowed a 11.25% cost of capital (use of the FCC cost of capital would have reduced the share valuation by over \$16 a share).

The Shareholder Litigation Decision was completely unexpected with the above errors adding, after adjusting for the cost of capital (\$9.11 overvaluation becomes \$5.42) adjustment, over \$28 to the share value.

350. The Delaware Shareholder Litigation was spearheaded by Defendant Greenlight.

351. RTFC required a meeting with Jeff Prosser in May of 2004 to discuss the consequences and solutions to the Shareholder Litigation Decision.

352. RTFC proposed, and Jeff Prosser rejected, a bankruptcy filing to wash out the potential judgment of the Shareholder Litigation Decision.

353. Openly expressing concerns that a bankruptcy would result in the loss of the

⁷⁸ Not highly unlikely but impossible to achieve in reality.

⁷⁹ All tests written by valuation experts agree that in valuation of a regulated entity (Vitelco drove Emerging earnings) the discount rate to be used is the cost of capital assigned by the regulators.

French Properties (ultimately the Group II Assets), Jeff Prosser refused a prepackage bankruptcy.

354. The meeting became hostile as CFC/RTFC attempted to force Jeff Prosser into bankruptcy.

355. The May 2004 meeting ended without resolution when Jeff Prosser threatened a derivative suit regarding CFC's Embezzlement Scheme.

356. Without notice of any default to Jeff Prosser or ICC or a payment default, RTFC instigated the foreclosure action on June 1, 2004 in the U.S. District Court for the Eastern District of Virginia. *See* U.S. District Court for the Eastern District of Virginia, CASE #: 1:04-cv-00633.

357. The 2004 Foreclosure was retaliatory in order to suppress Jeff Prosser so that he would not go to legal authorities to seek redress for the Embezzlement Scheme.

358. The 2004 Foreclosure was based upon and required the submission of the False 2001 Loan Agreement to the Federal District Court for the Eastern District of Virginia, a commission of a crime.

359. The 2004 Foreclosure was also lawful since CFC, acting through RTFC, was taking an action in response for a threatened derivative action harmful to Jeff Prosser and others, for the purpose of preventing Jeff Prosser from providing to a law enforcement officer truthful information relating to the commission of numerous Federal offenses committed by CFC directly or indirectly related to the Embezzlement Scheme.

360. CFC/RTFC then wrongfully instigated additional retaliatory litigation all premised upon the False 2001 Loan Agreement:

- a. On August 3, 2004 RTFC amended the 2004 Foreclosure Action adding nearly 30 additional trumped-up defaults.

b. On September 20, 2004 RTFC filed an action against Jeff Prosser based upon his guarantee of ICC's obligation under the False 2001 Loan Agreement. *See* U.S. District Court for the Eastern District of Virginia, CASE #: 1:04-cv-1106.

c. On September 30, 2004 RTFC instigated a derivative complaint against Jeff Prosser and all the other members of ICC's Board including Plaintiff Raynor based entirely upon RTFC's status as a creditor derived from the False 2004 Loan Agreement; *See* U.S. District Court for the Virgin Islands, CASE #: 2004/132.

d. On March 23, 2005 RTFC instigated a suit against Vitelco based upon a loan made under the 2001 False Loan Agreement as amended by the 2003 Settlement. *See* U.S. District Court for the Eastern District of Virginia, CASE #: 1:05-cv-0320.

361. In addition to wrongfully and for an unlawful purpose instigating litigation, CFC, acting through RTFC, did engage in numerous wrongful and intentional acts to force Jeff Prosser into bankruptcy including, but not limited to:

a. In 2004 RTFC travelled to the Virgin Islands and met with the Virgin Islands Public Services Commission ("VIPSC"), Vitelco's regulator, to proclaim the 31 defaults in order to tortiously interfere in ICC's relationship with the VIPSC.

b. Using the trumped-up and bogus 31 defaults, RTFC, on or about September 10, 2004, publicly declared in the Virgin Islands that RTFC would own ICC by January of 2005.

c. RTFC approached the unions in the Virgin Islands to tortiously interfere with ICC's relationship with said unions and to enlist their aid in RTFC's retaliatory campaign against Mr. Prosser.

d. Using the bogus 31 defaults, RTFC caused a derogatory article to be

published on October 4, 2004, by “Telephony.online”.

e. Using the bogus 31 defaults, RTFC caused a derogatory article to be published on November 1, 2004, by Forbes.

f. Using Defendant NRECA’s and Defendant English’s influence with RUS (the administrator of RUS had served 16 years on NRECA’s board and 2 years on CFC’s Board) and the bogus 31 defaults, CFC induced RUS to cut-off and/or suspend a \$100 Million Capital Improvement credit facility to Vitelco, after Vitelco had let contracts for several of its capex projects, thus severely and negatively impairing the value of Vitelco and the cash flow produced by Vitelco.

g. Using the bogus 31 defaults, RTFC called the Royal Bank of Trinidad and Tobago (“RBTT”) and intentionally tortiously interfered with ICC-LLC’s financing of the acquisition of Belize Telecommunication Ltd. (“BTL”) thus –

(i) Ultimately causing the write-off to Vitelco of \$30 Million; and

(ii) Causing the collapse of ICC-LLC’s efforts to finance the BTL acquisition, decreasing ICC-LLC’s Enterprise Value by over \$200 Million, and negatively impacting the debt service capability of ICC.

The foregoing is by no means a full recitation of CFC’s actions acting directly or through RTFC to retaliate and cause harm to Jeff Prosser and/or the ICC’s management loyal to Jeff Prosser.

362. In a September 2004 meeting held in Chicago, CFC, acting through RTFC, and represented by Defendants Lilly and Lists, as well as their then outside counsel, acknowledged to Plaintiff Raynor of RTFC’s extortion plan to cut-off all direct and indirect sources of financing to ICC and impair ICC’s cash flow in order to cause the capitulation of Jeff Prosser forcing him into a pre-packaged bankruptcy.

363. As a consequence of CFC's actions, ICC was forced into a payment default in January of 2005.

364. Notwithstanding CFC's, acting through RTFC, intentional and continuous campaign of assault against Jeff Prosser, CFC was failing because –

a. On September 9, 2005 under threat of an application for sanctions, RTFC stipulated to the voluntary dismissal with prejudice of sixteen defaults;

b. On December 30, 2005 ICC obtained a summary judgment with respect to another 5 defaults; and

c. ICC had discovered that the 2001 Loan Agreement was false.

The wheels were coming off CFC's retaliatory foreclosure against Jeff Prosser.

365. Under oath, Defendant Vaughan gave the following answer on May 20, 2005 to the question posed in a deposition –

Q. Can you sit here today and tell me that each and every word on the physical loan document that Mr. Prosser signed is identical to the words in the loan documents, the four versions of the loan documents that Mr. Siegfried asked you about? That's a yes or no question, sir.

A. No.

See page 224 of the Vaughan deposition.

366. On December 30, 2005 RTFC was denied a summary judgment by and against ICC on the 2004 Foreclosure Action noting in footnote 2 to the decision that –

² For example, each of RTFC's claims is dependant on the existence of a specific loan document, which outlines the obligations of ICC as a borrower and what constitutes a default. While the loan transaction is not in dispute, the parties dispute the very document that RTFC claims reduced the loan transaction and ICC's obligation to a writing.

367. During calendar year 2004 not one member of RTFC's Board of Directors made an independent inquiry to ICC as to the events and circumstances surrounding RTFC's vexations relationship with ICC.

368. During calendar year 2005 not one member of RTFC's Board of Directors made an independent inquiry to ICC as to the events and circumstances surrounding RTFC's vexations relationship with ICC.

369. CFC was facing catastrophic consequences as a result of its unlawful and retaliatory 2004 Foreclosure Action premised upon a unilaterally altered document, the False 2001 Loan Document including -

a. A final judicial determination that the False 2001 Loan Agreement was unilaterally altered by RTFC meant that pursuant to U.S. Virgin Islands law, RTFC's loans to ICC, by virtue of the fraudulent alteration of the Authentic 2001 Loan Agreement, are uncollectible pursuant to 11A V.I.C. § 11A/3-407, of the U.S. Virgin Islands UCC.

b. A final judicial determination of the fraudulent alteration of the Authentic 2001 Loan Agreement would entitle ICC and Jeff Prosser to hundreds in millions in damages as a result of the instigation to the 2004 Foreclosure Proceeding in bad faith and the interference with the Belize acquisition and ICC's relationship with their unions, USDA Rural Utilities Services, the VIPSC, etc.

c. Lastly, CFC would be exposed to the racketeering ramifications of its

Embezzlement Scheme if Jeff Prosser approached the regulatory authorities⁸⁰ and if, of course, said authorities performed their statutory duties.

370. The catastrophic consequences CFC was facing would be devastating unless CFC could continue CFC's retaliatory, extortionary, and vexation actions against Jeff Prosser.

371. In October of 2005 CFC found a willing collaborate and conspirator in Defendant Greenlight.

372. Defendant Greenlight had received an opinion from the Delaware Chancery in June of 2004 entitling Greenlight and the other Plaintiffs to a judgment.

373. No judgment was sought because a bankruptcy of ICC would create such damage to ICC's enterprise value that Greenlight's potential recovery would be negatively impacted if not eliminate.

374. In August of 2005, the potential judgment creditors in the Delaware Shareholder Litigation other than Greenlight settled their claim of over \$100 Million against ICC for the sum of less than \$5.6 Million leaving only Defendant Greenlight.

375. On August 17, 2005, the Defendant Greenlight had accepted \$4.4 Million from ICC in partial settlement of their claims from the Delaware Shareholder Litigation. The \$4.4 Million was paid with the express agreement⁸¹ that the parties, ICC and Greenlight, would negotiate in good faith, and that Greenlight would release Directors of ICC that were potential judgment creditors other than Jeff Prosser.

376. Defendant Greenlight's proclivity and concern about preserving ICC's enterprise value (before the Intercreditor Agreement) has been documented by two writings which are -

⁸⁰ By October of 2004 Jeff Prosser began the process by first, through counsel, engaging independent experts to verify the Embezzlement Scheme. The first approach to the SEC was made in early 2005.

⁸¹ The Partial Settlement Agreement stated in paragraph 2 "In consideration of Greenlight's agreement to conduct Settlement Discussions and the releases"

a. In a March 11, 2002 letter to RTFC in which Greenlight stated:

“... I believe that the RTFC and Greenlight have a mutual interest in maximizing the value of Innovative's and Prosser's operations. That means it is in our mutual interest to prevent: (i) a voluntary bankruptcy, (ii) a distress sale of assets, and (iii) my fraudulent conveyance of assets.”

b. In a June 24, 2004 Letter to ICC's counsel in which Greenlight's counsel stated:

“Please be advised that the Company's commencement of a voluntary chapter 11 case at this time will destroy value and opportunities for creditor recoveries - - and, accordingly, would be an actionable breach of fiduciary duties owed by the Company and its officers and directors to creditors, including Greenlight.”

Thus, by 2004 Defendant Greenlight's concern about an ICC bankruptcy had escalated to a point where Greenlight threatened further litigation should ICC seek voluntary bankruptcy.

377. RTFC had always rejected Defendant Greenlight overtures because RTFC under the False 2001 Loan Agreement had a superior security interest and claim to:

a. The shares of ICC; and

b. All assets of ICC including the shares of all ICC's subsidiaries in Vitelco.

378. Faced with the impending catastrophic consequences of the False 2004 Loan Agreement, RTFC approached Greenlight about joining forces against Jeff Prosser on or about October of 2005.

379. Defendant Greenlight abandoned its concern about preservation of ICC's enterprise value and joined RTFC's vexatious, merciless, brutal, and retaliatory assault on Jeff Prosser by acting to destroy rather than preserve the enterprise value of ICC. RTFC agreed to –

a. Pay \$15 Million to Defendant Greenlight directly from RTFC and not from the recovery from the sale of the ICC assets upon ICC being placed in bankruptcy;

b. Pay another \$12.5 Million to Defendant Greenlight directly from RTFC

and not from the recovery from the sale of the ICC assets upon the sale of ICC's assets;

c. Pay another 10% to Defendant Greenlight in the unlikely event that the recovery from the sale of ICC assets did per chance exceed \$327.5 Million; and

d. Subordinate RTFC's claim against the personal estate of Jeffrey J. Prosser to the extent of the first \$35 Million.

The agreement designated the **Intercreditor Agreement** was executed effective October 24, 2005.

380. Defendant Greenlight was insulated from the damage to the ICC enterprise value by the \$27.5 Million Greenlight would receive even if there was no recovery (as in fact events had so transpired) and the subordination of RTFC's claim to Greenlight against Jeff Prosser's personal assets.

381. For the piece of gold represented by the Intercreditor Agreement Defendant Greenlight voluntarily joined RTFC in the publicly stated objective of destroying Jeff Prosser notwithstanding the cost.

382. The Intercreditor Agreement is a 'joint venture' between RTFC and Greenlight which pursues CFC's retaliatory objectives through RTFC, i.e., separate ICC from the Prossers; discharge Jeff Prosser and management loyal to Jeff Prosser; and strip the Prossers of all assets and the ability to seek recompense.

383. Under information and belief, for cash payment of \$25 to \$30 Million the whole issue with Defendant Greenlight could have been settled by and between Defendant Greenlight and ICC and Jeff Prosser.

384. Defendant RTFC induced Defendant Greenlight and Defendant Greenlight did breach the August 7, 2005 Partial Settlement Agreement with ICC and the implied covenant of

good faith and fair dealings when entering into the Intercreditor Agreement.

385. By letter dated November 9, 2005, Defendant Greenlight wrongly sought to obtain a Delaware judgment against New ICC, an entity not sued⁸² in the combined actions in the Delaware Shareholder Litigation.

386. Thereafter, Defendant Greenlight moving hand-in-hand with RTFC did act as follows:

a. RTFC and Greenlight intentionally manipulated the circumstances around correcting a transcription error wrongly relied upon by Delaware Chancery so that the correcting affidavit arrived after the January 9, 2006 judgment against EmCom, ICC-LLC and Jeff Prosser (but not against New ICC) was granted on January 9, 2006.

b. Greenlight intentionally recorded the Delaware January 9, 2006 Judgment against New ICC on or about January 17, 2006 in the U.S. Virgin Islands and Florida knowing that their Judgment against New ICC had not been granted.

c. Upon obtaining the Delaware judgment dated January 9, 2006, to avoid a TRO based upon Vitelco's status as a regulated entity, Greenlight and RTFC misled the V.I. Federal District Court by representing at a hearing as set forth on page 14 of the February 10, 2006 Memorandum Opinion of the Court:

“Greenlight and RTFC have agreed, to the extent a bankruptcy petition is filed, to inform the PSC and Vitelco of such proceeding and to provide Vitelco and the PSC with an opportunity to be heard before seeking the appointment of a trustee. See Hr'g Tr. 7, Feb. 1, 2006.”

Later, in the bankruptcy proceedings, Greenlight and RTFC moved for an appointment of a trustee without notifying the PSC.

⁸² At the time of the Delaware litigation, Greenlight had no incentive to sue New ICC; the assets of which were fully encumbered by RTFC.

d. On the evening of February 10, 2006, after the above Memorandum Opinion, Greenlight filed involuntary bankruptcy petitions in the Delaware Bankruptcy Court against EmCom, ICC-LLC, and Prosser.

387. Additionally, Defendant Greenlight was motivated to participate in retaliatory and extortionary acts because of an appeal by Jeff Prosser and EmCom that before an independent Court would succeed because the value was dependent upon a **financial forecast that was impossible⁸³ to achieve**.

388. Jeff Prosser was faced with involuntary bankruptcy petitions in February of 2006.

389. Under fear of losing everything even if Mr. Prosser won the Delaware Appeal and the June 2004 Foreclosure action, Jeff Prosser capitulated⁸⁴ and on April 26, 2006 CFC, RTFC and Greenlight entered into the Term Sheet (the “2006 Settlement Agreement”) to settle the litigation with Prosser:

a. Jeff Prosser received a sixty (60) day period (a quiet period) to buyout RTFC’s and Greenlight’s claims for \$402 Million; illusory consideration.

b. RTFC received the judgment in the June 2004 Foreclosure action.

c. Greenlight obtained the dismissal of ICC’s appeals of the Delaware judgment making that judgment unassailable.

390. To further insure that Jeff Prosser did not succeed in his refinancing, upon information and belief, RTFC and Greenlight coordinated their efforts with the Preferred Shareholders so that the Preferred Shareholders would instigate litigation against Vitelco in order that Jeff Prosser did not receive the benefit of the bargain for a quiet period.

⁸³ ICC’s rate based under the financial forecast disappeared and becomes negative while earnings increase – an impossibility.

⁸⁴ Extortion includes the voluntary surrender of property rights by fear.

391. Prosser, EmCom, and ICC-LLC filed voluntary bankruptcy as the 2006 Settlement Agreement (which was implemented in June 2006) expired July 31, 2006 without securing the commitment for the refinancing –an impossibility given the short period.

392. Under information and belief the 2006 Settlement Agreement time period was illusionary because the task was overwhelming given the short period but the Preferred Shareholder Litigation made it impossible.

393. The bankruptcy has progressed and has divested Jeff Prosser of control over ICC having disposed of nearly all the ICC assets because of the combination of:

- a. A bankruptcy judge, one that would be named as a Defendant but for being cloaked in judicial immunity (hereinafter the “Immune Judge”) that is prone to aberrant decisions provided the result is to the detriment of Jeff Prosser;

- b. An aberrant Chapter 7 Bankruptcy Trustee, the Trustee over the Jeffrey J. Prosser Bankruptcy Estate, whom is beholdng to Defendant Greenlight and joined the retaliatory and extortionary conspiracy;

- c. An aberrant Chapter 11 Trustee, the Trustee over the estates of ICC-LLC, EmCom, and ICC, whom is beholdng to CFC and joined the retaliatory and extortionary conspiracy;

- d. Bankruptcy counsel for the Chapter 11 Trustee, Defendant Vinson and Elkins, whom is beholdng to CFC and joined the retaliatory and extortionary conspiracy; and

- e. The appointment of a bankruptcy examiner that is beholdng to CFC and whom had a prior undisclosed history with CFC mediating the CoServ reorganization and was involved in Var Tec bankruptcy.

The bankruptcy court merely offered another venue where the retaliatory and extortionary efforts of CFC were in fact emboldened and continued under the color of law of the bankruptcy forum.

The Miscarriage of Justice in the Bankruptcy Court Proceedings

394. There is not enough paper to explain the miscarriage of justice that occurred in the Bankruptcy Court with respect to the bankruptcy proceedings of (i) Jeffrey J. Prosser, a Chapter 7 Bankruptcy, (ii) ICC-LLC, a Chapter 11 Bankruptcy, (iii) EmCom, a Chapter 11 Bankruptcy, and (iv) ICC, a Chapter 11 Bankruptcy; therefore, what follows is an explanation of the top ten (10) most egregious events.

395. These events exemplify the fact that CFC, acting through RTFC, continued their retaliatory and extortionary activities directed to harming Jeff Prosser and anyone loyal to Jeff Prosser under the guise of bankruptcy proceedings.

396. The Chapter 11 Trustee, the Chapter 7 Trustee, and the attorneys for the Chapter 11 Trustee⁸⁵ have clearly used the advent of the bankruptcies in an attempt to harm, ruin and financially relegate Plaintiffs Jeff Prosser, Dawn Prosser, and their children to the financial graveyard so that:

a. Jeff Prosser could never seek recompense for CFC's fraudulent and unlawful activities; and

b. CFC could continue its Racketeering Activities.

Number One & Two – The RTFC & Greenlight Claims.

397. The 2006 Settlement Agreement was executed on April 26, 2006 between the date of the filing of the involuntary bankruptcies of ICC-LLC, EmCom and Jeffrey Prosser on

⁸⁵ The attorneys for Defendant Greenlight and for the Chapter 7 Trustee are not named as defendants because they have committed no act that clearly is beyond the bounds of lawful representation so as to be 'overt act' that indicates the firms' complicity in the CFC retaliatory and extortionary efforts. Discovery could easily change these circumstances.

February 10, 2006 and July 31, 2006, the date of the filing of voluntary bankruptcies of ICC-LLC, EmCom and Jeffrey Prosser.

398. The 2006 Settlement Agreement was a letter of intent between the parties.

399. The documents to implement the 2006 Settlement Agreement were executed by Jeff Prosser in June of 2006 or within ninety (90) days of bankruptcy.

400. The 2006 Settlement Agreement is **void as a matter of law** on a number of independent grounds, including:

a. The 2006 Settlement Agreement is meant to facilitate and enable CFC to continue its pattern of fraudulent security reporting by suppressing Jeff Prosser, making the 2006 Settlement and Related Documents void as a matter of law⁸⁶ pursuant to *15 U.S.C. § 78cc*;

b. With reference to the involuntary bankruptcy petitions, as a matter of bankruptcy law⁸⁷, the Bankruptcy Court had to approve and did fail to approve the 2006 Settlement Agreement as a transaction not in the ordinary course of business;

c. With reference to the involuntary bankruptcy petitions, as a matter of bankruptcy law the terms of the 2006 Settlement Agreement required the dismissal of the involuntary bankruptcy petitions (required under the 2006 Settlement Agreement) making the 2006 Settlement Agreement a *de facto* bankruptcy reorganization⁸⁸ requiring the procedural protections of any reorganization plan to make it effective, as a matter of

⁸⁶ This section is the codification of Public Policy that is much broader, in all probability, than the Public Policy that would have been adopted under traditional evolution of case law.

⁸⁷ The surrender of a legal cause of action is the surrender of a property right under Third Circuit case law.

⁸⁸ Bankruptcy law does not allow a reorganization and emergence from bankruptcy upon solely the say of the Debtor and major creditors but requires a notice and participation (a vote) of all creditors that will be directly or indirectly affected by the plan.

law;

d. With reference to the voluntary bankruptcy petitions, as a matter of bankruptcy law, the June documentation of the 2006 Settlement Agreement granted preferences to RTFC and Greenlight which are subject to avoidance⁸⁹ (and would have been avoided by an independent Trustee) because of the execution of the implementing documents within sixty days of the bankruptcies; and

e. The 2006 Settlement Agreement was a product of a course of retaliatory and extortionary conduct (beginning with the June 1, 2004 foreclosure) making such agreements **void because of the Public Policy**⁹⁰.

Only one of the above grounds is necessary to set aside the 2006 Settlement Agreement and the related documents executed in conjunction therewith.

401. With actual knowledge of the foregoing, the Chapter 11 Trustee did not seek to and in fact resisted setting aside the 2006 Settlement Agreement in violation of the Trustee's fiduciary duty:

- a. to maximize the estates⁹¹; and
- b. to challenge claims⁹².

402. With the foregoing known by the Chapter 7 Trustee, the Chapter 7 Trustee did not

⁸⁹ 11 U.S.C. § 547 that allows the setting aside of all preferences granted within 90 days of bankruptcy is Congressional acknowledgment that the economic duress pending bankruptcy often causes a debtor to favor one debtor (the squeaking wheel) over other debtors when trying to avoid bankruptcy.

⁹⁰ Federal Courts can not be used as a venue to enforce agreements that are a product of unlawful course of conduct (rewarding unlawful retaliatory conduct) nor would courts enforce unlawful agreements.

⁹¹ Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. Pa. 1996) (The Trustee has the duty to maximize the value of the estate and in so doing is bound to be vigilant and attentive in advancing the estate's interests.); and Commodity Futures Trading Com v. Weintraub, 471 U.S. 343, 352 (U.S. 1985) (The Trustee has the duty to maximize the value of the estate.)

⁹² 11 U.S.C. 704(a) The trustee shall ... "(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper...."

seek to and in fact resisted setting aside the 2006 Settlement Agreement in violation of the Trustee's fiduciary duty:

- a. to maximize the estates⁹³; and
- b. to challenge claims⁹⁴.

The Chapter 7 Trustee's intentional breach of his duties and lack of independence with respect to Greenlight in order to benefit Defendant Greenlight is demonstrated by the Trustee's distribution of over \$1 Million (the sales proceeds from Lake Placid property) to Defendant Greenlight notwithstanding (i) NO order approving the distribution (*See* Trustee's Proposed Distribution, Case 3:06-bk-30009-JKF, Doc 2195, Filed 10/31/08), (ii) an objection to the proposed distribution (*See* Case 3:06-bk-30009-JKF, Doc 2204, Filed 11/03/08), and (iii) an oral order of the Immune Judge at the November 10, 2008 hearing that there be no distribution to Greenlight until such time as the Preference Action was determined.

403. Setting aside the 2006 Settlement Agreement would have opened the door to –

- a. Proving the fraudulent alteration of the Authentic 2001 Loan Agreement by the Chapter 11 Trustee would make RTFC's claim uncollectible pursuant to *11A V.I.C. § 11A/3-407*, of the U.S. Virgin Islands UCC provision, thus enhancing the estate; and

- b. Re-implementing the Delaware appeals by the Chapter 7 Trustee would have, upon information and belief, reduced the Greenlight claim⁹⁵ from over \$90 Million

⁹³ *See* Footnote 51.

⁹⁴ *See* Footnote 52.

⁹⁵ Delaware Chancery made three simple mistakes when using the Gordon Growth Model: (i) allowing depreciation at \$22.4 Million with capital expenditures at \$9.4 Million making the forecast impossible to achieve; (ii) valuing a business acquired in an open market purchase for \$27 Million at \$130 Million; and (iii) ignoring the Rule of Primary Jurisdiction requiring the Court to use either the PSC 11.5% Cost of Capital or the FCC's cost of capital of 11.25% and not the 8.69% used!

to less than \$10 Million enhancing the value of the estate.

404. The value of the Chapter 11 Estate and Chapter 7 Estate would have been maximized by setting aside:

- a. RTFC's claim or indebtedness; and/or
- b. Greenlight's claim.

405. On or before August 13, 2008, the Court appointed examiner contacted the Trustee's counsel to persuade the Trustee to implement an avoidance action against Greenlight. The Chapter 7 Trustee resisted and even refused when the Examiner made a formal demand. *See* Case 3:06-bk-30009-JKF, Doc 2264, Filed 12/10/08, pgs. 8-9.

406. The failure of the Chapter 11 Trustee to so act to ultimately set aside RTFC's claim was because the Chapter 11 Trustee was beholding to RTFC and joined CFC's retaliatory and extortionary ends acting through RTFC to destroy Jeff Prosser.

407. The failure of the Chapter 7 Trustee to so act to set aside Greenlight's claim was because the Chapter 7 Trustee was beholding⁹⁶ to Defendant Greenlight and had joined Greenlight's/CFC's retaliatory and extortionary end to destroy Jeff Prosser.

Number Three – The ICC Bankruptcy.

408. Only after entering into the Intercreditor Agreement with RTFC did Defendant Greenlight seek a judgment from the Delaware Chancery against ICC.

409. In November of 2005, Defendant Greenlight sought a judgment against ICC after:

- (i) The trial against Emerging Communications and others including a dissolved Virgin Islands corporation (dissolved in December of 1998) also called

⁹⁶ The Trustee's first appearance in the Bankruptcy proceedings of Jeff Prosser was a notice filed January 17, 2007 that James P. Carroll of Carroll Services, LLC would serve **as Greenlight's expert witness**.

Innovative Communication Corporation that ended November 6, 2001; and

(ii) The May 3, 2004 opinion of the Delaware Chancery.

ICC, formerly known as Atlantic Tele-Network Company, assumed the name of Innovative Communication Corporation (hereinafter “Old-ICC”) after its dissolution.

410. Greenlight was denied a judgment against ICC by the Delaware Chancery and was only allowed a judgment against Old-ICC (the judgment specially stated it was against the dissolved Virgin Islands corporation). *See In re Emerging Communs., Inc. S'holders Litig.*, 2006 Del. Ch. LEXIS 25 (Del. Ch., Jan. 9, 2006).

411. Nevertheless, Defendant Greenlight filed an involuntary bankruptcy petition against ICC on July 5, 2007. *See* V.I. Bankruptcy Court, 07-bk-30012, Dk Entry # 1.

412. RTFC and the Chapter 11 Trustee supported Greenlight’s involuntary petition against ICC with formal filings knowing that there was NO legal foundation⁹⁷ for Greenlight’s claim.

413. In 1998 Greenlight was a shareholder of EmCom and not a shareholder of ICC.

414. Greenlight’s claim against ICC stems from the privatization of EmCom which forced-out Greenlight in October 19, 1998.

415. The limitation statute in Delaware, the case which resulted in the judgment, is three (3) years. *See* 10 Del.C. § 8106.

416. Delaware law was applied to the privatization because Greenlight appraisal action in 1998 and the Fiduciary action filed in June of 1998 were based upon Delaware law.

417. Greenlight’s claim against ICC was time-barred if not filed on or before October 19, 2001.

418. Greenlight did not sue ICC notwithstanding Greenlight had actual knowledge of

⁹⁷ The parties knew they had a judge that was bias and prejudiced against Jeff Prosser.

the liquidation of Old-ICC because there was no incentive to sue ICC whose assets appeared to be entirely pledged to RTFC until the Intercreditor Agreement was executed in October of 2005.

419. Greenlight had actual knowledge that ICC (New ICC) was not named as a defendant in the Delaware litigation and Old ICC was dissolved having stipulated to that fact:

Innovative Communication Corporation (“Innovative”) is a USVI corporation which had its principal place of business in St. Croix, USVI. As a result of a reorganization effected on December 23, 1998, Innovative was dissolved and liquidated and its assets transferred to ATN Co. (a subsidiary of Emerging) in exchange for preferred stock, which was transferred to ICC, LLC in the liquidation. ATN Co. changed its name to Innovative Communication Corporation (“New ICC”).

See Case 3:07-bk-30012-JKF, Doc 37-7, Filed 08/27/07, Exhibit F to Abramczyk Affidavit, Page 4 of 7, setting forth the stipulation of facts to the Delaware Chancery.

420. In a gross injustice, the Immune Judge held⁹⁸ or found that Jeff Prosser waived the defense that the Greenlight claim against ICC was time-barred holding “defenses are released.” *See Case 3:07-bk-30012-JKF, Doc 73, Filed 09/27/07, Page 27 of 92.* The Immune Judge later stated:

“Why do you need to waive a defense though if you've released something? I know -- I agree that the word release is an unusual word in that context, and I do agree that de think of waiving defenses as opposed to releasing defenses....” *See Case 3:07-bk-30012-JKF, Doc 73, Filed 09/27/07, Page 36 of 92.*

Eventually, under the Immune Judge’s legal interpretation⁹⁹, Greenlight can in bad faith assail ICC or Jeff Prosser with any untruthful acquisition and all “defenses are released.”

⁹⁸ In essence, the Immune Judge is finding that a release allows the released party to say, claim, or make up anything and the party that signs the release must maintain, for legal purposes, silence. There is no good faith standard.

⁹⁹ This establishes either the Judge is very biased or is ignorant of fundamental precepts of law.

421. Pursuant to the Rooker-Feldman Doctrine (a doctrine that Federal Courts lack subject matter jurisdiction to review determinations made by a state court – in this the Delaware Chancery Court) the Bankruptcy Court did not have jurisdiction to consider Greenlight’s claim that ICC was liable when that very claim was rejected by the Delaware Chancery. A Federal Court does not sit and can not act as an appellant court over a state court.

422. Nevertheless, the Immune Judge, in exercise of her judicial powers, in a bizarre and legally unsupportable ruling, held:

“If old ICC [Old-ICC] thought, for example, that new ICC [ICC] was the real party in interest, it like any of the other parties could've brought new ICC [ICC] into the action. I mean it's not necessarily up to Greenlight to point the finger at a merged entity.” *See Case 3:07-bk-30012-JKF, Doc 73, Filed 09/27/07, Page 38 of 92.*

Thus, the failure to name ICC (referred to as New ICC in the quote) didn’t stop or prohibit the Immune Judge rewriting the law, rewriting the Delaware decision, and holding that ICC, a party not sued and against whom the Delaware Chancery refused to grant a judgment, can be effectively held liable pursuant to the Delaware decision.

423. RTFC and Greenlight have a good faith duty¹⁰⁰ in bankruptcy proceedings.

424. The Chapter 11 Trustee (the Trustee of ICC, EmCom & ICC-LLC) has a duty to be impartial and without bias¹⁰¹ which duty runs also to Jeff Prosser¹⁰².

425. The outlandish positions of the Chapter 11 Trustee, the RTFC and Greenlight with respect to the Greenlight involuntary petition can not be justified by the actions of the

¹⁰⁰ *Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154 (3d Cir. Del. 1999) (Bankruptcy relief is equitable in nature, and, as a general rule, equitable remedies are not available to any party who fails to act in an equitable fashion & a good faith standard protects the jurisdictional integrity of the bankruptcy courts by rendering their equitable weapons available only to those debtors and creditors with clean hands.)

¹⁰¹ *In re WHET, Inc.*, 750 F.2d 149 (1st Cir. Mass. 1984) (A trustee is a representative of the estate and as such he owes a fiduciary duty to debtor and creditors alike to act fairly and protect their interests.

¹⁰² *Commodity Futures Trading Com v. Weintraub*, 471 U.S. 343, 355 (U.S. 1985) (The fiduciary duty of the trustee runs to shareholders as well as to creditors.)

Immune Judge (we got away with one philosophy¹⁰³).

426. Greenlight's motivation was to earn the \$27.5 Million bounty under the Intercreditor Agreement; act as RTFC's and thus CFC's surrogate in instigating the involuntary bankruptcy of ICC consistent with CFC's retaliatory and extortionary plans. Greenlight is a conspirator with, at the very least, CFC's extortionary and retaliatory objectives.

427. All parties, Greenlight, the Chapter 11 Trustee, and RTFC knew that there was no legal support for Greenlight's claim against ICC but knowingly acted in concert in continuation of retaliatory and extortionary course of conduct knowing the Immune Judge, in exercise of her judicial powers, might grant such an unlawful and unsupportable request.

428. The retaliatory dismissal of Jeff Prosser and management loyal to Jeff Prosser took place within the first month after the September 21, 2007 Order of Relief and within days of the appointment of the Chapter 11 Trustee of ICC-LLC and EmCom as the Chapter 11 Trustee of ICC.

Number Four – North Shore Reality.

429. The Trustees' actions went much further than failing to act impartially with Defendant RTFC and Defendant Greenlight and clearly crossed the line by intentionally causing Dawn Prosser financial harm with no intent to enrich whatsoever any of the estates.

430. The Chapter 7 Trustee and the Chapter 11 Trustee were successful in obtaining a permanent injunction against Plaintiff Dawn Prosser effectively tying up the assets she owned. See Case 3:07-ap-03010-JKF, Doc 81, Filed 12/13/07.

431. Northshore Realty Inc. ("Northshore") is a corporation owned by Plaintiff Dawn Prosser which was not a party to the injunctive proceeding and therefore, the injunction only extends to Plaintiff Dawn Prosser's ownership of Northshore.

¹⁰³ Even the law of the case doctrine has a manifest justice exception.

432. Northshore owned a condo and had a positive cash account.

433. To deny Plaintiff Dawn Prosser access to the earnings from her assets and to damage the value of her property owned through Northshore, both Chapter 7 Trustee and the Chapter 11 Trustee conspired with Northshore's bank, First Bank ("1st Bank"), to effectively deny Plaintiff Dawn Prosser any access to her account.

434. All of Plaintiff Dawn Prosser's checks, as a result of said conspiracy, were dishonored by 1st Bank even though the checks were to pay expenses necessary to preserve the property such as Condo dues.

435. Plaintiff Dawn Prosser was subjected to penalty interest rates and threats of foreclosure because of unpaid Condo dues.

436. In an action in the Superior Court of the Virgin Islands, instigated by Plaintiff Dawn Prosser against 1st Bank on March 17, 2009, she sought access to Northshore bank accounts and damages from the Bank for the unlawful failure to honor checks for which there were sufficient funds.

437. The Chapter 7 Trustee instigated a bankruptcy motion against Plaintiff Dawn Prosser for suing 1st Bank seeking sanctions. *See* Case 3:07-ap-03010-JKF Doc 646 Filed 05/14/09.

438. Upon information and belief, no Trustee before an unbiased Bankruptcy Judge¹⁰⁴ would ever seek to enjoin a law suit in state court meant to set aside the unlawful extension of an injunction to the business operations of a non-party, Northshore, which has only one objective: to cause Plaintiff Dawn Prosser to lose the Condo owned by Northshore.

439. The unlawful conspiracy to extend the injunction to the business affairs of

¹⁰⁴ However, the Immune Judge in complete disregard for Dawn Prosser's property rights ordered Dawn Prosser to drop her suit. *See* Case 3:07-ap-03010-JKF, Doc 682, Filed 08/21/09.

Northshore for the purpose of causing Plaintiff Dawn Prosser the loss of property indisputably establishes that the Chapter 11 Trustee has joined in Defendant RTFC's and Defendant Greenlight's retaliatory and extortionary conduct and conspiracy.

440. The unlawful conspiracy to extend the injunction to the business affairs of Northshore for the purpose of causing Plaintiff Dawn Prosser the loss of property rights indisputably establishes that the Chapter 7 Trustee has joined in Defendant RTFC's and Defendant's Greenlight's retaliatory and extortionary conduct and conspiracy.

Number Five – Internal Revenue Bureau.

441. As alleged herein CFC, through RTFC, has attempted to discredit Plaintiff Jeff Prosser by public statements in Bankruptcy Court, before the Public Service Commission, before the Federal Communication Commission, in various articles, etc.

442. The Chapter 11 Trustee and the Defendant Springel's Lawyers took up the mantle and made numerous disparaging remarks accusing Jeff Prosser of crimes and caused others to accuse Jeff Prosser of crimes knowing the untruthfulness and falsehood of their accusations.

443. CFC, through RTFC, has particularly emphasized the distributions made from ICC that were reported in every financial statement (the "Contra-Equity Account") given to RTFC with an annual footnote earmarking such payments, which RTFC never, in some ten plus loan agreements (amendments), never attempted to halt.

444. The Contra-Equity Account and the payments represented thereby were not even alleged to be an item of default in the 2005 Foreclosure Agreement instigated by RTFC.

445. Defendants Chapter 11 Trustee and Springel's Lawyers suggested that the payments represented tax avoidance even though Plaintiff Jeff Prosser's tax returns in the possession of the Chapter 11 Trustee and Springel's Lawyers reported on Schedule C that

Plaintiff Jeff Prosser millions more of income than the sums reflected in the contra-equity account.

446. In fact, Jeff Prosser materially over-paid his income taxes since some of the distributions derived from Vitelco were wholly or partially tax exempt (depending upon extent of EDC credit) because of Vitelco's Economic Development Status or designation.

447. Nevertheless, after extending the deadline for the Internal Revenue Bureau ("IRB" the Virgin Islands counterpart to the Internal Revenue Service) to file a claim, Defendant Stewart met with the IRB and delivered schedules regarding distributions from ICC to Plaintiff Jeff Prosser's benefit in order to instigate a claim by the IRB against the estate of Jeffrey J. Prosser.

448. The instigation of a tax claim against Plaintiff by the direct efforts of the Chapter 11 Trustee and Springel's Lawyers not only violates their duty to maximize the estate but was for the purposes of furthering Defendant CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him.

Number Six – The Rejection of the \$402 Million Settlement Agreement.

449. As pled above, Jeff Prosser secured \$620 Million in financing from Silver Point Finance, LLC (the "Silver Point Financing") that would have paid out \$402 Million to fully satisfy the RTFC and Greenlight claims.

450. Defendants Greenlight and RTFC, acting in concert, rejected the \$402 Million payment and stated in open Court:

Mr. Galardi for Greenlight:

"We can also take the testimony from Mr. Augustine, who was absolutely clear. He believes that this financing is the highest valued. He also said that the market check, back a year ago on the sale, may be the highest value. What's going on is they believe that that's the highest value, we have to take it. We don't want to take it. It's not a paternalistic situation. The fact of the matter is, if this is the highest value and if we're

unwise for letting a sale process go forward, **we're willing to live with the risk**. The **RTFC is willing to live with the risk**, we just want the process free of the one gentleman who seems to control all of this, Mr. Prosser. And that's really the thrust of this motion." (Emphasis added)

See August 3rd Hearing Transcript, case no's 06-30007; 06-30008; & 06-30009, Transcript, pgs. 36-7, L 16 thru L2.

Defendant Gerber for RTFC:

"We want him out of control of the process. The creditors don't believe what he offered is good enough as a matter of law and as a matter of fact and you can't compel us to accept that proposal, and we choose not to do so voluntarily. And what's remarkable as the Court has pointed out, maybe we'll get less money doing it our way, **that's a possibility, but that's our risk. There isn't anybody else at risk that will get less money**. We'll make sure that there's a well financed telephone company, the people in the Virgin Islands will have their telephone company. **But if we get less out of this, it's our risk to let the trustee do that.**" (Emphasis added)

See August 3rd Hearing Transcript, case no's 06-30007; 06-30008; & 06-30009, Transcript, p. 40, L 12 thru L21.

Thus, RTFC assumed the risk of loss after testimony from Mr. Augustine, a managing director of Rothschild, the financing represented the highest value to assets would attract.

451. As stated by Defendants RTFC's and Greenlight's representatives, the rejection of the Silver Point Financing was based upon the personal reasons rather than acting in the best interests of –

- a. The creditors of the ICC Estate;
- b. The creditors of Jeff Prosser's then Chapter 11 Estate; and
- c. The creditors of CFC.

452. The rejection of the Silver Point Financing by Defendants RTFC and Greenlight was motivated by their retaliatory and extortionary conduct so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

453. Nevertheless, the Chapter 11 Trustee had a duty to maximize the ICC Estate¹⁰⁵.

¹⁰⁵ *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. Pa. 1996) (The Trustee has the duty to maximize the value of the estate and in so doing is bound to be vigilant and attentive in advancing the estate's interests.); and

454. The Chapter 11 Trustee agreed that the Silver Point Financing was the highest value for the ICC Estate. Mr. Augustine, a Managing Director of Rothschild testified before the Bankruptcy Court as follows:

23 Q And what has Mr. Springel told you?

24 A Well, I've told Mr. Springel that in my view that a sale
25 would clearly not maximize value, and that there would be a
1 substantial reduction in value from the Silver Point financing
2 if one was pursued. **Mr. Springel has agreed with that**
3 **conclusion.** (Emphasis added)

See Case 3:06-bk-30008-JKF, Doc 883, Filed 09/13/07, Pages 45-46 of 217.

455. Nevertheless, the Chapter 11 Trustee in violation of his duty to maximize the Chapter 11 Estates of ICC-LLC, and EmCom (he was appointed Trustee of both EmCom and ICC-LLC on March 15, 2007), the Trustee did not use the Silver Point Financing to cram down¹⁰⁶ a reorganization plan.

456. The Chapter 11 Trustee of ICC-LLC, and EmCom did not pursue the reorganization plan based upon the Silver Point Financing because the Silver Point Financing required the retention of Plaintiff Jeff Prosser (and management loyal to him) and the release of Jeff Prosser. The Chapter 11 Trustee had joined RTFC's and Greenlight's retaliatory and extortionary conspiracy.

457. Defendants Chapter 11 Trustee of ICC-LLC, and of EmCom and Springel's Lawyers objective in not seeking a cram down reorganization plan based upon the Silver Point Financing was furthering Defendant CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

Commodity Futures Trading Com v. Weintraub, 471 U.S. 343, 352 (U.S. 1985) (The Trustee has the duty to maximize the value of the estate.)

¹⁰⁶ The Bankruptcy Judge could have directed the Trustee to file a plan based upon the Silver Point Financing.

Number Seven – Trustee’s Counsel Complicity In Identity Theft.

458. 18 U.S.C. § 1030 *et. seq.* makes it a federal crime for anyone to access the computer of another without authorization or permission.

459. 18 U.S.C. § 371 makes racketeering any conspiracy whereby two or more individuals agree to violate the laws of the United States.

460. The Chapter 11 Trustee’s counsel, Defendant Springel’s Lawyers, did submit to the Bankruptcy Court documents unlawfully obtained knowing that such documents were unlawfully accessed: Jeff Prosser’s personal credit card statements from American Express for the months of April and May of 2008 (the “Prosser’s Credit Card Statements”). *See* Case 3:06-bk-30009-JKF, Doc 2012-1, Filed 08/25/08, Exhibit A - TE 61

461. The theft of Mr. Prosser’s confidential and proprietary information was committed directly by Arthur Stelzer, a former employee¹⁰⁷, whose home fax number appears on portions of the Exhibit where Defendant Springel’s Lawyers failed to redact his number.

462. In a December 19, 2007 testimony under oath to Defendant Lee, Arthur Stelzer (“Stelzer”) confirmed that he had been dismissed from his employment by Prosser in October 2007.

463. In April 2008 and again in May 2008 Stelzer illegally accessed the American Express Financial Account details of Jeffrey Prosser. This theft of financial information is, upon information and belief, in violation of Florida Statute §§ 815.06 (1)(a) and (b).

464. Defendant Springel’s Lawyers admitted¹⁰⁸ that the information was received from Stelzer.

¹⁰⁷ He was terminated on or about October 16, 2007.

¹⁰⁸ In a fact which again shows the bias of the Judge, Defendant Lee filed an affidavit stating that he did not know Stelzer was not employed by Jeff Prosser even though Stelzer was clearly Springel’s Lawyers witness (one of the chief witnesses) giving contrived testimony long before he accessed the Prosser Credit Card Statements; nevertheless, the bias Judge accepted Defendant’s Lee’s statement..

465. Upon information and belief, Defendant Springel's Lawyers altered the May 2008 American Express statement to eliminate Stelzer's fax number.

466. Defendant Springel's Lawyers did deliberately, intentionally and willfully surreptitiously gain control of privileged information through Stelzer knowing the information was unlawfully obtained.

467. Defendant Springel's Lawyers did use the information to financially harm Plaintiffs Jeff Prosser and Dawn Prosser.

468. Defendant Springel's Lawyers knowingly used unlawfully obtained information to intentionally further Defendant CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

Number Eight – Trustee's Adversary Proceedings.

469. The Chapter 7 Trustee has instigated over 50 adversary proceedings allegedly to obtain property to maximize the Estates.

470. The Chapter 11 Trustee has instigated nearly 90 adversary proceedings allegedly to obtain property to maximize the Estates.

471. All the adversary proceedings instigated by the Chapter 11 Trustee and the Chapter 7 Trustee collectively, if successful, would not have the financial impact of setting aside the 2006 Settlement Agreement, re-instituting the Delaware appeal, and setting aside Greenlight's judgment.

472. All the adversary proceedings instigated by the Chapter 11 Trustee and the Chapter 7 Trustee taken together, if successful, would not have the financial impact of setting aside the 2006 Settlement Agreement, challenging the 2001 False Loan Agreement and setting

aside RTFC's claim.

473. Nevertheless, the adversary proceedings were used by the Chapter 11 Trustee to sue management and others loyal to Jeff Prosser to knowingly further Defendants CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

Number Nine – Eling Joseph & Stelzer.

474. In the case of the Chapter 7 Estate, the last day for the Trustee to timely file an avoidance suit was October 3, 2007.

475. In the case of the Chapter 11 Estate, the last day for the Trustee to timely file an avoidance suit was September 20, 2007.

476. Plaintiff Prosser testified that Arthur Stelzer had purloined a minimum of \$200,000.00 from him.

477. Eling Joseph, Plaintiff Jeff Prosser's executive assistant and present employee of ICC under the Chapter 11 Trustee's control, testified –

- a. That she had ICC checks made out to the order of her husband of \$250,000;
- b. That she had ICC checks made out for cash in the sum of \$700,000;
- c. That she personally handed over the \$700,000 to Defendant Prosser; and
- d. That she did not report the bonus checks her husband received as taxable income.

478. Plaintiff Jeff Prosser proved (his testimony was collaborated with independent evidence) that at the time the ICC checks were cashed that Jeff Prosser and Eling Joseph were

not then, or at any time within a reasonable period thereabout, in the same geographic location, making hand delivery of the cash impossible.

479. With respect to bonus checks to Eling Joseph's husband whom did not work for the Innovative Communication Corporation, Plaintiff Jeff Prosser testified that he had not authorized the payment of the bonus to Eling Joseph's husband.

480. The Chapter 11 Trustee and Defendant Springel's Lawyers did not sue Eling Joseph because she provided testimony against Plaintiff Jeff Prosser.

481. The Chapter 7 Trustee did not sue Arthur Stelzer because he provided testimony against Plaintiff Jeff Prosser.

482. In breach of his duty, the Chapter 11 Trustee and Defendant Springel's Lawyers did not pursue an adversary proceeding against Eling Joseph because she furthered Defendants CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

483. In breach of his duty, the Chapter 7 Trustee did not pursue an adversary proceeding against Arthur Stelzer because he furthered Defendants CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

Number Ten - The Civil RICO –.

484. This Civil RICO action was filed on December 7, 2008.

485. Plaintiff Jeff Prosser filed the Civil RICO seeking damages resulting from the commission of the predicate act under *18 U.S.C. § 1513(e)* for Defendants' harmful actions

which interfered with his lawful employment and livelihood because this cause of action accrued after the conversion of Jeff Prosser's personal bankruptcy from Chapter 11 Bankruptcy to a Chapter 7 Bankruptcy.

486. The property loss experienced by the retaliatory and extortionary activities of Defendants CFC and Greenlight legally belongs to the Chapter 7 Estate.

487. There have been several demands upon the Chapter 7 Trustee to join the Civil RICO to seek recovery for the Enterprise Value of ICC and its affiliates (the "ICC Enterprise Value") destroyed as a result of the Racketeering Activities of the Defendants.

488. Legally (11 U.S.C. § 554(c)), Plaintiff Jeff Prosser is the owner of the claim if not pursued by the Chapter 7 Trustee.

489. The Chapter 7 Trustee has taken no action or omitted to take action which would resolve the issue by abandoning the claim or negotiating an interest in the claim should Plaintiff Jeff Prosser pursue the claim for the ICC Enterprise Value at his own expense.

490. Instead the Chapter 7 Trustee seeks to intentionally stymie the ICC Enterprise Value claim.

491. The Chapter 7 Trustee is complicit with Defendants CFC and Greenlight knowingly acting to further Defendants CFC's and Greenlight's retaliatory and extortionary agenda against Plaintiff Jeff Prosser and management loyal to him so that CFC could continue its practices in violation of the Securities Laws by discrediting and suppressing Jeff Prosser.

492. The Chapter 7 Trustee is seeking to deprive Plaintiff Jeff Prosser and the Estate's creditors any benefit of the ICC Enterprise Value claim in violation of his duty to maximize the estate because of his obvious joiner in the Racketeering Activities which are retaliatory and extortionary to Plaintiff Jeff Prosser, his family, and management loyal to Jeff Prosser.

The Bankruptcy Process.

493. The Bankruptcy process has been successfully deployed by Defendants CFC and Greenlight because the complicity of the conspirators, the Chapter 11 Trustee, the Chapter 11 Trustee's attorneys, Springel's Lawyers, and the Chapter 7 Trustee, with an Immune Judge that is aberrant and deviate that is *in pari delicto* in bankrupting the ICC Estate, in stripping Plaintiff Jeff Prosser, Plaintiff Dawn Prosser, Plaintiff Adrian Prosser of their assets.

Violations of Federal Law

494. The Racketeering Activities and unlawful conduct of the Defendants can be separated in three categories which are:

- a. Reoccurring unlawful acts directly related to the Racketeering Activities ("Direct Racketeering Unlawful Conduct");
- b. Reoccurring unlawful acts indirectly related to the Racketeering Activities against whistle blowers to suppress or conceal the Racketeering Activities so that the Racketeering Activities may continue ("Indirect Racketeering Unlawful Conduct"); and
- c. Other unlawful activities that violate Federal laws ("Other Unlawful Conduct") which pertain to fraudulently reporting loan losses because of inept management (the give-away program to Electric Members) of the Racketeering Enterprise has left CFC unable to afford large loan losses.

Mail Fraud.

495. CFC directly or through RTFC engaged in numerous direct reoccurring acts of fraud through the use of the U.S. Mails related to or involving –

- a. False representations that CFC is a tax-exempt organization in conjunction with and in furtherance of Racketeering Activities knowing that CFC's operations did not

comply with the operational test (making CFC ineligible for tax-exempt status) because of CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

b. False representations that CFC held coop principles in high regard and operated in accord with such principles when in fact CFC was using a two-tier coop structure (CFC-RTFC) for purposes of effecting CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

c. For numerous contacts with numerous rural telephone companies since 1987 through the present regarding loans and/or patronage income all related to effecting CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

d. For numerous contacts with numerous investors, including Farmer Mac and the USDA from 1987 through the present, to obtain funding for use in conjunction with and in furtherance of Racketeering Activities involving CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

e. From 1987 through the present for the distribution of CFC's fraudulent financial statements to Electric Companies (members and potential members) of CFC, investors, and others in conjunction with and in furtherance of Racketeering Activities involving CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

f. From 1987 through the present for the distribution of RTFC's fraudulent financial statements to Telephone Companies of RTFC, investors, and others in

conjunction with and in furtherance of Racketeering Activities involving CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

g. From February 2006 through the present, for RTFC's counsel, Defendant Fulbright Group, to cause the distribution of false filings made in the bankruptcy court such as the April 3, 2009 distribution of the False 2001 Loan Agreement with ICC (yet another version) in conjunction with and in furtherance of Racketeering Activities involving CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud; and

h. From ICC's first default in 2001 through the present day, with respect to Plaintiff Jeff Prosser and ICC, CFC or CFC through RTFC, and Defendant Fulbright Group made numerous mailings that through material misrepresentation or through material omissions given what was said all to mislead various parties about ICC and Jeff Prosser in conjunction with and in furtherance of Racketeering Activities involving CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud.

Each of the above categories of communication is a violation of *18 USC § 1341*.

496. In addition to the above incidents of mail fraud directly related to CFC's Racketeering Activities, CFC issued all kinds of press releases and engaged in a pattern of written communications distributed through use of the U.S. Mails that fraudulently misrepresented:

a. The purpose of the ICC foreclosure when the ICC foreclosure was to suppress a whistleblower; and

b. Lies as to the catastrophic loan loss CFC has experienced with respect to the ICC Loan.

These incidents of mail fraud, violations of *18 USC § 1341*, are directly related to carrying on undeterred by investors CFC's retaliatory and extortionary conduct related to quashing the whistleblower, Jeff Prosser and management loyal to Jeff Prosser.

497. CFC is a highly leveraged financing cooperative that is constantly making use of the U.S. Mails related to CFC's or RTFC's lending activities or CFC's funding activities (raising funds) nearly all of which would include some form of fraudulent representation that permeates all their communications with potential and actual investors in violation of *18 USC § 1341*.

498. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1341* pursuant to and under *18 USC § 2*.

499. Each act of mail fraud is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of mail fraud involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Wire Fraud.

500. CFC's use of the mails directly and use of the mails through RTFC are all accompanied and supplemented by wire fraud violations that are:

a. In conjunction with and in furtherance of Racketeering Activities including CFC's sophisticated Embezzlement Scheme and/or money laundering activities emboldened by accounting fraud;

b. In conjunction with CFC's retaliatory and extortionary actions acting through RTFC to retaliate, discredit, and suppress Jeff Prosser and/or management loyal to Jeff Prosser;

c. In conjunction with misrepresenting the CFC's/RTFC's purpose for the ICC foreclosure which is to suppress and discredit a whistleblower, Jeff Prosser; and

d. In conjunction with the perpetration of accounting fraud related to loan losses carried as assets which standing alone make all of CFC's financial statements materially misleading.

Wire Fraud is a violation of *18 USC § 1343*.

501. CFC is a highly leveraged financing cooperative that is constantly making use of the U.S. Mails related to CFC's or RTFC's lending activities or CFC's funding activities (raising funds) nearly all of which would include some form of fraudulent representation that permeates all their communications with potential and actual investors in violation of *18 USC § 3*.

502. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1343* pursuant to and under *18 USC § 2*.

503. Each act of wire fraud is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of wire fraud involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Money Laundering.

504. Money laundering involves the violation of a very complex statute which is designed to reach a multitude of fraudulent schemes.

505. CFC's Embezzlement Scheme constitutes money laundering from more than one prospective.

506. The Embezzlement Scheme whereby Defendant CFC exercises its dominance and control over Defendant RTFC and CFC's management voluntarily assume positions that have a fiduciary obligation to RTFC's members to effect the Embezzlement Scheme is money

laundering, a violation of *18 USC § 1956(a)*, in part because it satisfies the following legal requirements:

a. The money (the “Proceeds”) derived from the systematic long-term Embezzlement Scheme (the theft of patronage income which legally belongs to RTFC) **are proceeds from the reoccurring commission of a felony**¹⁰⁹ in the over forty states in which RTFC made loans; and

b. The Proceeds are derived from a *specific unlawful activity* since –

(i) The reoccurring commission of mail fraud, a violation of *18 USC § 1341*, a specific unlawful activity under *18 U.S.C. § 1961(1)*, is essential to the Embezzlement Scheme;

(ii) The reoccurring commission of wire fraud, a violation of *18 USC § 1343*, a specific unlawful activity under *18 U.S.C. § 1961(1)*, is essential to the Embezzlement Scheme; or

(iii) CFC is and has been a recipient of federal funds (besides REDLG loans and Farmer Mac loans CFC has for years been making RUS guaranteed loans) making the Embezzlement Scheme a violation of *18 USC § 666*.

The Proceeds derived from the Embezzlement Scheme are tainted with illegality pursuant to *18 USC § 1956(a)* (the “Tainted Proceeds”).

507. The Tainted Proceeds involve each of the following violations of *26 USC § 7201*, one activity when coupled with paragraph 506 constitutes money laundering, in that:

a. Laundering money from the Embezzlement Scheme through CFC, a tax-exempt organization, to CFC’s Electric members intentionally resulted in RTFC (CFC’s

¹⁰⁹ There are numerous ways including statutes that make theft by deception a crime and statutes that racketeeringize a party standing in a fiduciary obligation using its position to steal.

management acting as RTFC's management prepared RTFC's income tax return), and in the RTFC members, underreporting income;

b. The Embezzlement Scheme was a profit making activity conducted by CFC (income was derived from Telephone Loan Portfolio and diverted to Electric Members) which was subject to non-related business income tax (tax exempt organizations are subject to tax on their unrelated business income¹¹⁰) pursuant to 26 USC § 511 which was improperly reported as Electric Members income (derived from loans to Electric Members) to avoid the tax as income derived from the Electric Loan Portfolio; or

c. Additionally, in order to carry out the Embezzlement Scheme CFC in fact operated contrary to its articles (which were used to fulfill the organization tests to obtain tax exempt status) and to requirement of tax law necessary to comply with the agency theory or the price adjustment theory; thereby violating CFC's tax-exempt status by making all distributions a violation of the prohibition in 26 USC § 501(c)(4)(B) and making CFC liable for income tax which was not paid.

The violation of any one of (a), (b), or (c) above is necessary to 18 USC § 1956(a)(1)(A)(ii); however, CFC, annually, committed three types of violations as set forth in (a), (b), and (c) above.

508. The commission of the felony under state or Federal law as averred in paragraph 506(a) above linked with any one violation under averred in paragraph 506(b) [three different violations exists] and further, coupling those unlawful acts with anyone of the violations in set forth in paragraph 507 above [three different violations exists] is and does constitute money

¹¹⁰ The only difference between CFC forming a bank to earned money from telephone loans and earning money as CFC did was deception and unlawfulness; nevertheless, CFC is responsible for income tax on such income as if CFC owned a telephone lending bank.

laundering within the meaning of *18 USC § 1956*. Note that this is an annual occurrence and has been an annual occurrence since RTFC was formed in 1987.

509. In addition to violations of *26 USC § 7201*, CFC separately violated *26 USC § 7206* by:

- a. Annually, knowingly filed False Tax Returns for RTFC; and
- b. Annually, knowingly filed False Tax Returns for CFC.

510. The commission of the felony under state or Federal law as averred in paragraph 506(a) above linked with any one violation under averred in paragraph 506(b) [three different violations exists] and further, coupling those unlawful acts with anyone of the violations in set forth in paragraph 509 immediately above [two different violations exists] is and does constitute money laundering within the meaning of *18 USC § 1956*. Note that this is an annual occurrence and has been an annual occurrence since RTFC was formed in 1987.

511. CFC and other defendants knowingly engaged in or permitted departures from GAAP such as the ‘single entity’ reporting and in reporting the Segment Information ascribing Telephone Loan Portfolio income as Electric Loan Portfolio income to disguise the nature, the location, the source, the ownership, or control of the proceeds of specified unlawful activity in violation of *18 USC § 1956(a)(1)(B)(i)*.

512. The commission of the felony under state or Federal law as averred in paragraph 506(a) above linked with any one violation under averred in paragraph 506(b) [three different violations exists] and further, coupling those unlawful acts with anyone of the violations in set forth in paragraph 511 immediately above is and does constitute money laundering within the meaning *18 USC § 1956*. Note that this is an annual occurrence and has been an annual occurrence since RTFC was formed in 1987.

513. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1956* pursuant to and under *18 USC § 2*.

514. The unlawful acts necessary for annual embezzlement of money that legally belonged to RTFC and the RTFC members and the underlying violations of Federal and State law constitute money laundering within the meaning of *18 USC § 1956*; in fact, as indicated above, the money laundering statute violations are cumulative – numerous violations.

515. Each act of money laundering is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of money laundering involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*. The money laundering activities involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Unlawful Retaliation.

516. Sarbanes-Oxley Act § 1107 enacted *18 U.S.C. § 1513(e)* which provides:

Whoever knowingly, with the intent to retaliate, **takes any action harmful to any person, including interference with the lawful employment or livelihood of any person**, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both. (Emphasis added)

The Federal racketeering statute addressing *Retaliating against a witness, victim, or an informant* has been thus amended to recognize “any [harmful] action” including “interference with the lawful employment or livelihood of any person....” This section is broad enough to capture within the statute wrongful discharge of a whistle blower.

517. There does not have to be an ongoing Federal investigation in order for the statute to be applicable to protect whistleblowers. A case under a companion statute, *18 USC §1512(b)(3)*, held that prohibiting and hindering communications does not require an official

proceeding to be pending or imminent at the time of the offense, but, rather, a reasonable belief that a named witness will communicate information to a law enforcement officer is enough to create liability under the statute. *See U.S. v. Davis*, 183 F.3d 231, 52 Fed. R. Evid. Serv. 732 (3d Cir. 1999), opinion amended on other grounds, 197 F.3d 662 (3d Cir. 1999).

518. CFC acting through RTFC did not and could not proffer to Jeff Prosser any feasible explanation for the Embezzlement Scheme and the related accounting fraud; therefore, CFC never proffered any explanation whatsoever.

519. Having embezzled at least \$25 Million to \$75 Million from ICC and Vitelco, and with the CFC viability resting in FY 2004 upon the continuation of Embezzlement Scheme, CFC, through RTFC, instigated a retaliatory foreclosure against Jeff Prosser to discredit, quash, and economically bury Jeff Prosser so that –

- a. CFC did not have to atone or be held accountable for the Embezzlement Scheme;
- b. CFC could continue its unlawful practices; and
- c. CFC could access Federal funds with false financial statements to displace in part CFC's reliance upon the Telephone Loan Portfolio.

With little flexibility in increasing rates, CFC's only choice was to average down cost of funding by accessing Federal funding at subsidized rates.

520. Each and every act stated above (and others not explicitly set forth) taken against Jeff Prosser and the other Plaintiffs by CFC directly or through RTFC and through or by conspirators with CFC was a violation of *18 USC § 1513(e)*.

521. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1513(e)* pursuant to and under *18 USC § 2*.

522. Each act of retaliation is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of retaliation involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Unlawful Extortion

523. The Hobbs Act (Extortion), *18 U.S.C. § 1951(a)*, racketeering izes extortion stating:

Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

524. *18 U.S.C. § 1951(b)(2)* provides -

The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Thus, stripping Jeff Prosser and Dawn Prosser of ICC, his personal assets, her personal assets, and Jeff Prosser’s livelihood is obtaining of property. Stripping the other Plaintiffs of their personal assets and their livelihood is obtaining of property.

525. In the May 2004 meeting by and between Jeff Prosser and CFC acting through RTFC, CFC attempted to coax Jeff Prosser into bankruptcy using the EmCom Shareholders Litigation Decision as the pretext for a pre-package bankruptcy.

526. Under information and belief, had Jeff Prosser agreed, CFC would have used the pretext of bankruptcy to strip Jeff Prosser of all of his assets, including ICC.

527. Jeff Prosser resisted bankruptcy expressing his “fear” that bankruptcy would be the end of ICC because ICC would lose the foreign subsidiaries while leaving ICC liable for related indebtedness.

528. All the series of retaliating acts commencing with the 2006 retaliatory foreclosure and ending with the 2006 Settlement Agreement were designed to coerce Jeff Prosser into surrendering all of his legal rights.

529. The 2006 Settlement Agreement was the cumulating and critical act of a series of retaliatory and extortionary acts, where Jeff Prosser facing an involuntary bankruptcy proceeding voluntarily surrendered his rights for illusionary consideration – a one in a million chance to avoid involuntary bankruptcy.

530. To further seal Jeff Prosser's and management loyal to Jeff Prosser fate, CFC and/or Greenlight conspired with Vitelco's Preferred Shareholders so that a suit was implemented within forty-eight (48) hours of Jeff Prosser executing and delivering the last document pursuant to the 2006 Settlement Agreement in June of 2006.

531. Each and every extortionary act stated above (and others not explicitly set forth) taken against Jeff Prosser and the other Plaintiffs by CFC directly or through RTFC and through or by conspirators with CFC from the commencement of the Retaliatory Foreclosure in June of 2004 through and after¹¹¹ the 2006 Settlement Agreement was a violation of *18 USC § 1951*.

532. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1951* pursuant to and under *18 USC § 2*.

533. Each act of extortion is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of extortion involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Tampering with Evidence.

534. It is a crime to tamper with documents: *18 USC § 1512(c)* states:

¹¹¹ CFC through RTFC and Greenlight took many acts to insure that when in bankruptcy Jeff Prosser would obtain no benefit from the 2006 Settlement Agreement.

Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.

535. CFC has admitted to altering and destroying the Authentic 2001 Loan Agreement.

536. CFC's Associate General Counsel admits to attaching the signature page from the Authentic 2001 Loan Agreement to the False 2001 Loan Agreement.

537. The fact that the 2001 Loan Agreement was false was not discovered until early 2005 and was not established until May of 2005.

538. The Intercreditor Agreement was spawned by the fact that CFC's retaliatory foreclosure was stymied once Jeff Prosser was able to establish the falsity of the 2001 Loan Agreement.

539. One extortionary end purportedly accomplished by the 2006 Settlement Agreement was the fact that Jeff Prosser surrendered his rights to object to the falsity of the 2001 Loan Agreement.

540. Whether as a result of extortion Jeff Prosser surrenders his rights or not, nothing transmutes the False 2001 Loan Agreement into the authenticate 2001 Loan Agreement notwithstanding the behavior of an Immune Judge whom operates outside the normal boundaries of the law.

541. CFC, acting through RTFC, did on many occasions submit various versions of the 2001 Loan Agreement to –

- a. The Federal District Court in Virginia;
- b. The Federal District Court in the Virgin Islands; and

c. The Virgin Islands Bankruptcy Court.

542. The last time CFC acting through RTFC submitted to the Virgin Islands Bankruptcy Court the False 2001 Loan Agreement (a different version then submitted before) was April 3, 2009. *See* Case 3:07-bk-30012-JKF, Doc 1192-6, Filed 04/03/09, Exhibit F.

543. Upon information and belief, Defendant Springel's Lawyers did threaten and intimidate Arthur Stelzer ("Stelzer"), a former employee of Jeff Prosser, to –

a. Cause Stelzer to, in violation of both Federal and State law, unlawfully use Jeff Prosser's password to access Jeff Prosser's American Express credit card bills for April and May of 2008, more than five months after being discharged from employment and deliver such records to Defendant Vinson & Elkins¹¹²;

b. Cause Stelzer to give false testimony against Jeff Prosser in a trial in Bankruptcy Court; and

c. Cause Stelzer to give false testimony when the identity theft and the computer fraud were discovered because Defendant Vinson & Elkins submitted the documents in Court.

This brazen behavior shows a disdain for the law which was emboldened by the Immune Judge (no other Judge would have tolerated such behavior).

544. The foregoing Stelzer related incidents violate *18 USC § 1512(d)*.

545. From the original opinion issuance¹¹³ in EmCom Securities Litigation in 2004, initially RTFC and later RTFC and Greenlight manipulated the circumstances around correcting

¹¹² Vinson & Elkins used the records in Court. *See* Case 3:06-bk-30009-JKF, Doc 2012-1, Filed 08/25/08, Exhibit A - TE 61, 9 pages.

¹¹³ RTFC was first asked to correct the transcription error in 2005; however, RTFC had already commenced the retaliatory foreclosure and a higher judgment fit within CFC's scheme to bring Jeff Prosser to his knees.

a transcription error¹¹⁴ wrongly relied upon by Delaware Chancery first by not acting and later insuring that the correcting affidavit arrived after the January 9, 2006 judgment against EmCom, ICC-LLC and Jeff Prosser (but not against New ICC) was entered.

546. The foregoing acts were done in contemplation of using an uncorrected (inflated) judgment as a basis for involuntary bankruptcy petitions against EmCom, ICC-LLC and Jeff Prosser which were in fact filed in February of 2006.

547. Each and every act to obstruct justice stated above (and others not explicitly set forth) taken against Jeff Prosser and the other Plaintiffs by CFC directly or through RTFC and through or by conspirators with CFC was a violation of *18 USC § 1512*.

548. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 1512* pursuant to and under *18 USC § 2*.

549. Each act of obstruction of justice is a racketeering activity within the meaning of *18 USC § 1961(1)* and further, the reoccurring commission of numerous acts of extortion involve the commission of a pattern of racketeering activity within the meaning of *18 USC § 1961(5)*.

Theft in Programs Receiving Federal Funds.

550. The 1994 10K, FN2, p. F-11, discloses outstanding CFC loans guaranteed by the REA (today “RUS”) of \$298 Million for FY 1991 and \$534 Million for FY 1994.

551. On July 29, 2005 the Federal Agriculture Mortgage Corporation (“Farmer Mac”), a government sponsored entity, made its first investment of \$500 Million to CFC. By August of 2009, Farmer Mac had over \$2.2 Billion invested directly or indirectly within CFC.

552. CFC accessed funds from the Rural Utilities Services, part of the U.S. Department of Agriculture, \$500 Million in November of 2005. By August of 2009, CFC had accessed \$3

¹¹⁴ The Judge cited RTFC’s valuations as support for the valuation which included a material error which RTFC was first asked to correct in calendar 2004.

Billion under the REDLG loan program.

553. CFC has always been an organization which has received over “\$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance” within the meaning of *18 USC § 666*.

554. *18 USC § 666* makes it unlawful for a recipient of Federal funds to –

“embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies, property....”

555. The Embezzlement Scheme is a reoccurring violation of *18 USC § 666*.

556. A violation of *18 USC § 666* is a predicate act under the Virgin Islands Racketeering ly Influenced and Corrupt Organizations Act (“CICO”), *14 V.I.C. § 600 et seq.*

557. Each and every act related to the Embezzlement Scheme stated herein (and others not explicitly set forth) was a violation of *18 USC § 666*.

558. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 666* pursuant to and under *18 USC § 2*.

559. Each related act to the Embezzlement Scheme is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to the Embezzlement Scheme is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

False Claims.

560. *18 USC § 287* provides –

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine in the amount provided in this title.

561. By August of 2009, CFC had access from Farmer Mac of over \$2.2 Billion.

562. By August of 2009, CFC had access from the Federal Financing Bank under the REDLG loan program of over \$3 Billion.

563. CFC's pattern of fraud is systemic so that CFC's financial statements are fictional work: CFC accessed the Federal funds from Farmer Mac and through the REDLG program with false financial statements.

564. The Senate Finance Report, which accompanied the 1986 amendments to the False Claims Act, stated:

The False Claims Act is intended to reach all fraudulent attempts to cause the Government to pay our sums of money or to deliver property or services. Accordingly, a false claim may take many forms, the most common being a claim for goods or services not provided, or **provided in violation** of contract terms, specification, **statute, or regulation**. ... Likewise, each and every claim submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements or other corrupt or fraudulent conduct, or **in violation of any statute or applicable regulation, constitutes a false claim**. (Emphasis added)
See S. REP. NO. 99-345, at 9 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5274.

At least eight Federal circuit courts of appeal have accepted the above Senate interpretation.

565. Pre-Farm Bill (prior to May 2008) investments of Farmer Mac in CFC of over \$1.3 Billion were unlawful because such investments were in violation of *12 C.F.R. §652.35 (d)(1)* which capped Farmer Mac's non-program investment authority at \$60 Million and *12 C.F.R. § 652.35(c)* which mandates that Farmer Mac's investments must be readily marketable (all investments were private placements) with an active secondary market.

566. Further, post Farm Bill investments were unlawful because CFC has bastardized Farmer Mac's authority: Farmer Mac's charter was amended to only allow Farmer Mac to **buy loans** from CFC and such authority is being manipulated so that Farmer Mac is functioning as CFC's bank by providing CFC with lines of credit; an ultra vires activity.

567. Lastly, to the extent funds were accessed from Farmer Mac (started in July of 2005) or through the REDLG program (started in November of 2005) in reliance on quarterly and annual financial statements issued after FY 2004, when Deloitte served as CFC's auditor, the audits were issued in violation of *15 U.S.C. § 78j-1*, the Audit Partner Rotation requirements of Sarbanes Oxley Act § 203, which make such audits unlawful.

568. Each and every act related to obtaining Federal funds stated herein (and others not explicitly set forth) was a violation of *18 USC § 287*.

569. Many of the Conspiratorial Defendants are legally culpable for the violations of *18 USC § 287* pursuant to and under *18 USC § 2* and *18 USC § 286*.

570. Each related act that violates *18 USC § 287* and *18 USC § 2* or *18 USC § 286* is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

False Credit Applications - REDLG Loans & Farmer Mac.

571. *18 USC § 1014* makes it unlawful for –

“... knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Farm Credit Administration, ... the Rural Development Administration ...”

572. By August of 2009, CFC had access from Farmer Mac of over \$2.2 Billion. Farmer Mac is an institution within the Farm Credit System. *See 12 USC § 2279aa-1(a)(2)*.

573. By August of 2009, CFC had access from the Federal Financing Bank under the REDLG loan program of over \$3 Billion. The REDLG program is administered by the USDA Rural Development Utilities Programs and requires the guarantee of the USDA.

574. CFC, with the assistance of conspirators, made false credit applications within the

meaning of *18 USC § 1014*.

575. Many of the Conspiratorial Defendants are legally and directly culpable for the violations of *18 USC § 1014* pursuant to and under *18 USC § 2*.

576. Each act related that violates *18 USC § 1014* is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

Accessing Federal Funds with False Statements.

577. *18 USC § 1001* provides that:

“... whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
shall be ...”

578. Upon information and belief, the False Financial Statements were augmented by other false documents including attorney opinions known to be false to enable CFC to access Federal funds of CFC and the Federal Financing Bank (REDLG program loans) in violation of *18 USC § 1001*.

579. CFC, with the assistance of conspirators, submitted the false documents within the meaning of *18 USC § 1001* with the intent that Farmer Mac and/or RUS rely thereon.

580. Many of the Conspiratorial Defendants are legally and directly culpable for the violations of *18 USC § 1001* pursuant to and under *18 USC § 2*.

581. Each related act that violates *18 USC § 1001* is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related

to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

Federal Security Law Violations.

582. *15 U.S.C. § 78ff* racketeeringizes willful violations of security laws (the laws as well as the regulations) particularly willful false and misleading statements.

583. Since 1987 all of CFC's mandatory quarterly and annual filings have been false and misleading statements in the numerous ways and aspects set forth in this document.

584. *15 USC § 78t* extends liability for violation of Security Laws beyond *18 USC § 2* to controlling persons and to aiders and abettors.

585. Many of the Conspiratorial Defendants are legally and directly culpable for the violations of *18 USC § 78ff* pursuant to and under *18 USC § 2* or *15 USC § 78t*.

586. Each act related that violates *18 USC § 78ff* is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

False Certifications.

587. *18 U.S.C. § 1350* requires Defendants Petersen and Lilly to certify each filing with the SEC that "that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer."

588. Defendants Petersen and Lilly clearly and unequivocally intentionally breach the requirements of this section creating a racketeering liability under subsection *§ 1350(c)*.

589. Each act that violates *18 U.S.C. § 1350* is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related

to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

Unlawful Actions: Virgin Islands Law

V.I. Extortion.

590. Set forth herein are numerous acts whereby CFC, acting through RTFC, Greenlight, as CFC's partner in the foreclosure, and the Trustees, acting in conspiracy with RTFC and Greenlight, the Chapter 11 Trustee and Chapter 7 Trustee, extorted obtaining of property from Jeff Prosser, with his consent, induced by a wrongful use of force or fear, or under color of official right.

591. There were numerous violations of Title 14, Chapter 35, Virgin Islands Code.

592. Many of the individual Defendants conspired with CFC, Greenlight, and/or the Trustees to commit extortion in violation of Virgin Islands laws in Title 14, Chapter 35, of the Virgin Islands Code.

593. Each extortionary act whether by a prime actor or conspirator is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

V.I. Forgery.

594. The False 2001 Loan Agreement is a forgery and violation of Title 14, Chapter 39, Virgin Islands Code.

595. Each instance in which the False 2001 Loan Agreement or documents related thereto was used is a violation of Title 14, Chapter 39, Virgin Islands Code.

596. Those Defendants that knowingly submitted or otherwise made use of the False

2001 Loan Agreement with actual knowledge of its falsity are equally liable for violations of Title 14, Chapter 39, Virgin Islands Code.

597. Many of the individual Defendants conspired with CFC and Greenlight to make use of the False 2001 Loan Agreement in violation of Virgin Islands laws in Title 14, Chapter 35, of the Virgin Islands Code.

598. Each act using or relying upon the False 2001 Loan Agreement knowing its falsity, whether by a prime actor or conspirator, is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

V.I. Obtaining Money Under False Pretense.

599. The Embezzlement Scheme takes money from Vitelco and ICC (and indirectly from ratepayers) under false pretenses in violation of *14 V.I.C. § 834*.

600. This has been an ongoing scheme since the first loan funded in December of 1987. Each quarterly payment made by Vitelco and ICC (or its predecessor, Atlantic Tele-Network Co.) for loans made and sums borrowed under false pretenses from December 1987 by and through January of 2005 exceeded the monetary threshold of *14 V.I.C. § 834*.

601. CFC, acting through RTFC, knowingly has engaged and with other RTFC members continues to engage in obtaining money under false pretenses in violation of *14 V.I.C. § 834*.

602. Many of the individual Defendants participated directly or indirectly in the violation of *14 V.I.C. § 834* by taking actions to conceal the Embezzlement Scheme and/or upon discovery to suppress and quash Jeff Prosser to prevent him from seeking compensation or

otherwise participated in unlawful retaliatory or extortionary conduct all to extricate CFC from its violations of *14 V.I.C. § 834*.

603. Each act demanding or obtaining extracting payments from loan documents obtained under false pretenses, whether by a prime actor or conspirator, is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

V.I. Embezzlement Laws.

604. The Embezzlement Scheme simultaneously violates:

- a. *14 V.I.C. § 1087* of more than \$100 is a felony under *14 V.I.C. § 1094*;
- b. The embezzlement of RTFC funds by CFC's management serving as RTFC's management is an embezzlement by fiduciaries within the meaning of *14 V.I.C. § 1091* and a felony pursuant to *14 V.I.C. § 1094*.

14 V.I.C. § 1091, embezzlement by fiduciaries, is applicable because under coop law (price adjustment theory or agency theory) RTFC's income in the hands of RTFC is property owned by the RTFC members¹¹⁵.

605. The Embezzlement Scheme has been ongoing since December of 1987 and each year the sums embezzled exceeded the dollar threshold for a felony. The Embezzlement Scheme victims included both Vitelco (thus the Virgin Islands ratepayers) and ICC.

606. Each act of embezzlement, whether by a prime actor or conspirator, is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of

¹¹⁵ Article X of RTFC's Articles provides: "All net proceeds (as defined below) shall be received by the Association with the understanding that they are furnished by its patrons as capital and that the Association is obligated to credit to a capital account for each patron."

rackeering activity within the meaning of *14 V.I.C. §604(j)*.

V. I. – Obstruction of Justice.

607. During the course of proceedings, various Defendants, in violation of *14 V.I.C. § 1504*, did, acting through RTFC, offered as true the False 2001 Loan Agreement on numerous occasions beginning in 2005 with the last time being April 2009, the False 2001 Loan Agreement in both the Virgin Islands Federal District Court and the Virgin Islands Bankruptcy Court.

608. CFC, acting through RTFC, did admit that the authenticate 2001 Loan Agreement was destroyed by RTFC in violation of *14 V.I.C. § 1506*.

609. Each act of destroying the authentic 2001 Loan Agreement or offering the False 2001 Loan Agreement as the true and correct copy of the document, whether by a prime actor or conspirator, is a rackeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of rackeering activity within the meaning of *14 V.I.C. §604(j)*.

V.I. Perjury.

610. To explain his use of Jeff Prosser's American Express credit card statements for May and June of 2008, Defendant Lee did offer and submit in the Virgin Islands Bankruptcy Court an affidavit swearing that he did not know Stelzer was no longer employed by Jeff Prosser, notwithstanding that:

- a. Stelzer, months earlier in a deposition, testified to Defendant Lee that he was no longer employed by Jeff Prosser; and
- b. The credit card statements related to a period after Stelzer had already falsely testified against Jeff Prosser.

Each of the foregoing acts violate *14 V.I.C. § 1541*.

611. Upon information and belief, the Chapter 11 Trustee and Defendant Lee solicited the testimony of Stelzer (knowing his character from the computer crime of stealing Jeff Prosser's credit card statements) in Court and in a deposition against Jeff Prosser that they knew to be false in violation of *14 V.I.C. § 1548*.

612. Upon information and belief, the Chapter 11 Trustee and Defendant Lee solicited the testimony of Eling Joseph¹¹⁶ in Court and in a deposition against Jeff Prosser that they knew to be false in violation of *14 V.I.C. § 1548*.

613. In each instance in which perjurious statements were solicited and submitted in Court or in deposition, whether a prime actor or conspirator, is a racketeering activity within the meaning of *14 V.I.C. §604(e)* and further, the reoccurring commission of numerous acts related to said violations is the commission of a pattern of racketeering activity within the meaning of *14 V.I.C. §604(j)*.

The Racketeering Enterprise & Hierarchy of Defendants

614. RTFC is –

- a. a private cooperative association originally incorporated in the state of South Dakota in September 1987, and subsequently in February 2005, reincorporated as a cooperative association in the District of Columbia;
- b. a taxable cooperative subject to Subchapter T of the IRC;
- c. a lender-owned coop lender to members which are RTFC's patrons.

As an organization formed to conduct a legitimate business, **RTFC is not a defendant in the RICO and CICO actions.**

615. The *racketeering enterprise* uses of RTFC to engage in Racketeering Activities. The persons whom operate the racketeering enterprise are Defendants CFC and CFC's

¹¹⁶ Ms. Joseph ended up taking the 5th Amendment after earlier having admitted to income tax fraud.

Management. Defendants, NRECA and English are associates-in-fact in the operation of the racketeering enterprise.

616. Defendant CFC is a person within the meaning of the RICO Act which is a tax-exempt financing coop that:

- a. established RTFC;
- b. completely dominates and controls the affairs of RTFC as set forth in paragraphs 8 through 16 of this document; and
- c. lends to rural Electric Coops which are members/patrons of CFC; and
- d. lends to RTFC.

Defendant CFC exercised dominion and control over RTFC and RTFC's business to an extent that would create jealousy among the most celebrated loan sharks.

617. CFC's Management Defendants (Defendants Petersen, List, Lilly, Borak, Evans, Larochelle, Zawalick, and Reed) are persons within the meaning of the RICO Act, which facilitate and absolutely control the affairs of RTFC, and occupy all key RTFC management positions.

618. CFC and the CFC's Management Defendants are liable under *18 USC § 1962(b)* for:

- a. unlawfully maintaining control over RTFC, and
- b. obtaining an interest in RTFC's income as an agent for Electric Members of CFC,

through a continuous pattern of Racketeering Activities that is still ongoing.

619. CFC's unlawful control over RTFC and CFC's unlawful interest in RTFC's income deprived Jeff Prosser of the benefit of well over \$30 Million and, upon information and

belief, well over \$70 Million strictly from the Embezzlement Scheme¹¹⁷ over the life of ICC's relationship with RTFC. Furthermore, discovery of the Embezzlement Scheme by Jeff Prosser and attempts to seek recompense for the deprivation of income and property from the Racketeering Activities resulted in the ongoing wrath of retaliatory and extortionary Racketeering Activities designed to excise from any relevance whatsoever Plaintiff Jeff Prosser, his family, and management loyal to Jeff Prosser.

620. CFC, CFC's Management Defendants, Defendant English, and Defendant NRECA are persons within the meaning of the RICO Act that are liable under *18 USC § 1962(c)* for unlawfully conducting and participating, directly or indirectly, in the conduct of RTFC through a pattern of racketeering activity.

621. CFC and CFC's Management Defendants operated and, in fact, conducted RTFC's (the legitimate enterprise) business affairs during all relevant periods.

622. Defendants English and NRECA are persons within the meaning of the RICO Act whom are associations-in-fact with Defendants CFC and CFC's Management Defendants in the operation of the racketeering enterprise. NRECA is under common ownership with CFC and NRECA and its Chief Executive Officer, Defendant English, have –

- a. NRECA caused the formation of CFC;
- b. NRECA and CFC are commonly owned by Rural Electric Coops;
- c. Defendant English served on CFC's Board from 1994 until

December 9, 2005 (CFC 8K, filed 12.15/2005);

¹¹⁷ The loss of Enterprise Value from the actions other than the Embezzlement Scheme amounts to over \$800 Million; however, the Embezzlement of \$3 Million in one year affects the overall Enterprise Value in that year from a low of \$24 Million to a high of \$36 Million.

d. NRECA is the political arm¹¹⁸ of CFC paving the way on the hill for CFC's access of Federal funds as well as absolutely undermining the USDA, the RUS, and the Farm Credit Administration (turning these organizations into CFC's piggy bank); and

e. Many of NRECA's directors simultaneously or subsequently serve as CFC's directors and/or officers.

Defendants NRECA and English part in directing the business affairs of CFC and RTFC, including CFC's day-to-day management control over RTFC, will be further developed in the "culpability" portion of this complaint.

623. All other Defendants are persons which –

- a. joined the conspiracy,
- b. committed predicate acts or engaged in overt acts in furtherance of CFC's pattern of predicate acts;
- c. Have knowledge that CFC's acts were part of a pattern of predicate acts.

The culpability of each defendant is developed in a separate provision of this complaint.

Culpability of CFC & CFC's Management Defendants

624. For purposes of this section paragraphs 8 through 623, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which Defendant CFC and CFC's Management Defendants materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

625. The culpability of Defendant CFC has been unequivocally established in the foregoing pleadings.

¹¹⁸ NRECA claims over and over to represent coops that provide electricity for 35 Million to 40 Million voters. NRECA is as influential as Freddie Mac and Fannie Mae before their recent collapse.

626. The culpability of CFC's Management Defendants has been unequivocally established in the foregoing pleadings; however, note –

- a. Such Defendants willingly entered into a fiduciary relationship to and with rural telephone companies to effect the Embezzlement Scheme;
- b. Such Defendants willingly exalt coops and coop values¹¹⁹ while using a coop to effect the Embezzlement Scheme;
- c. Such Defendants willingly exalt CFC's tax-exempt status knowing that its operations do not comport with the tax code; and
- d. Such Defendants willingly access billions of dollars, public and private, knowing that CFC's Financial Statements are fictional.

The Defendants are more egregious than the traditional racketeering enterprise because CFC and CFC's Management Defendants trade off CFC's purpose - rural development, CFC's organization form – coop, and CFC's purported representation of 35 to 40 Million voters to carry out the racketeering enterprise.

627. Defendant CFC and CFC's Management Defendants are responsible directly or indirectly for every unlawful act and for every lawful act in furtherance of an unlawful racketeering enterprise.

Culpability of NRECA & Defendant English

628. For purposes of this section paragraphs 8 through 627, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which Defendants NRECA and/or English materially participated in or committed to advance the

¹¹⁹ See CFC's web pages and links at <http://www.nrucfc.org/aboutcfc/ourCoreBeliefs.htm> which starts with the statement "At CFC we operate from a position of transparency where the same level of service, integrity, and excellence guides all of our actions with each and every member of our cooperative. As a result, we proudly share our Core Beliefs for all to see."

racketeering enterprise or Racketeering Activities.

629. CFC publishes on its web site that overall policy is set by a 23-member Board and NRECA. *See* <http://www.nrucfc.org/aboutcfc/howWeOperate.htm>.

630. Defendant English served on CFC's board from 1994 until December of 2005.

631. CFC's Management Defendants participate in qualified retirement plans established by NRECA. *See* 2009 10K, p. 72 (National Rural participates in a multiple employer pension plan managed by NRECA and National Rural also offers a Pension Restoration Plan, which is a component of the NRECA Retirement Security Plan, to a select group of management, including the named executive officers, to increase their retirement benefits above amounts available under the Retirement Security Plan)

632. Many of CFC's board members have previously served as board members of NRECA.

633. Defendant Larochelle worked 12 years at NRECA before joining CFC.

634. NRECA caused the formation of CFC in 1969.

"In 1967, the National Rural Electric Cooperative Association (NRECA) proposed the creation of a not-for-profit financing institution that would be cooperatively owned by the rural electric cooperative network. NRECA members approved this plan and CFC was incorporated on April 10, 1969." *See* The CFC Story on CFC's published¹²⁰ web pages.

635. Defendant English is the heart and soul of CFC's retaliatory and extortionary conduct believing that he, with his grass roots lobbying campaign and lobbying expenditures¹²¹, places NRECA, CFC, and himself above the law.

636. There is nothing more telling of Defendant English's attitude than as recorded in

¹²⁰ <http://www.nrucfc.org/aboutcfc/cfcHistory.htm>

¹²¹ Opensecrets.org places NRECA's 2009 contributions at \$2.6 Million and 2008 expenditures at nearly \$5.6 Million. *See* <http://www.opensecrets.org/lobby/clientsum.php?year=2008&lname=National+Rural+Electric+Cooperative+Assn&id=>

hearing before House Committee on Oversight and Government Reform on June 26, 2008, which was investigating *GOVERNANCE AND FINANCIAL ACCOUNTABILITY OF RURAL ELECTRIC COOPERATIVES: THE PEDERNALES EXPERIENCE*.

637. Representative Cooper authored an article for the Harvard Legislative Journal setting out some of the corruption in rural electric coops – See “Electric Co-operatives: From New Deal to Bad Deal?”, Harvard Journal on Legislation, Vol. 45, p. 335, (Spring 2008).

638. The article while complementary of NRECA was very critical of a number of rural cooperatives suggesting that many coops were not responsive to their members and further, Electric coops were not a voluntary association. The article singled out some of the most corrupt coops and their practices (such as not having membership meetings for decades).

639. Representative Cooper’s article instigated the investigation by the House Committee.

640. Here are some selected portions of the transcript:

Line 2648/49 - Mr. ENGLISH. ... “You were previously very supportive of electric cooperatives.”

Line 2650 - Mr. COOPER. “I still am.”

Line 2651 - Mr. ENGLISH. “Well, we disagree on that for sure.”

Line 2652 - Mr. COOPER. “I still am.”

Line 2653/54 - Mr. ENGLISH “I guarantee you we disagree big time on that one.”

...

Line 3440-45 - Mr. ENGLISH. ... NRECA's counsel has advised me that Mr. Cooper is currently under investigation by the Federal Bureau of Investigation for his unauthorized access and downloading of information from NRECA's password-protected website, and that is in violation of the Federal Computer Fraud and Abuse Act. These abuses—

The first statement is as good as guarantying Representative Cooper that he will not receive any money from NRECA’s PAC.

641. Defendant English accused a sitting Congressman, Representative Cooper, of

committing a crime because he had the gall to author an article that was unfavorable to rural electric coops and accessed NRECA's web site with the password given to him by a NRECA member. Defendant English's testimony at the hearing is littered with disrespectful and antagonistic comments and statements such as suggesting that Congress was full of bad apples and Defendant English could give names. The attitude is one of retaliation against a Congressman and disdain for the Committee that had dared to suggest that coops are in need of more independent regulation.

642. A point that Representative Cooper made is indicative of NRECA's role within the racketeering enterprise. Representative Cooper stated in lines 2623 through 2627 as follows:

Now I know that your PAC gives as much money to politicians **as Boeing Corporation**, so that has got a lot of influence. It has got a lot of influence in States, too. **You [NRECA] pretty much draft whatever legislation you want** and get exempted, you know, so there is no oversight. (Emphasis added)

Defendants NRECA and English are very powerful¹²² in D.C.

643. Defendant English is the one that paved the way for CFC's access of Federal funds by engineering two changes in the law, which are –

a. Defendant English spearheaded the enactment of *7 USCS § 940c-1*, special purpose legislation which makes CFC eligible for the REDLG loan program under which CFC has borrowed to date, with false financial statements, \$3 Billion; and

b. Defendant English was instrumental in passing *110 P.L. 246, 5406*, in June of 2008 which altered Farmer Mac's charter eliminating the \$2.5 Million loan cap and granting Farmer Mac the authority to purchase CFC loans.

¹²² Footnote 95 sets out the spending level but English always appears in the lists of the most influential lobbyists.

Defendant NRECA acting through its CEO pushed through two pieces of legislation which are the basis for ALL of CFC's current direct borrowing of Federal funds without which CFC would have collapsed.

644. Defendant English testified in support of the amendments as follows:

a. On May 9, 2007, before the Senate Agriculture, Nutrition and Forestry Committee; and

b. On June 7, 2007, before the House Committee on Small Business.

645. CFC is the only private lender eligible to participate under both the amendments to Farmer Mac's charter and the REDLG legislation which provisions provide -

a. The amendment to Farmer Mac with respect to qualified loan provide that loan must "by a **cooperative lender** to a borrower that has received, or is eligible to receive, a loan" from the RUS. *See* 12 USC § 2279aa(9)(c). (Emphasis added)

b. The REDLG amendments, 7 U.S.C.A. § 940c-1, provide even more restrictive language "cooperative or other lenders organized on a not-for-profit basis" whom make loans to lenders qualified to receive RUS loans.

Note, that even with special legislation CFC is not eligible for REDLG program but for fraud and uses Farmer Mac in a capacity not contemplated or authorized by Farmer Mac's charter – as a bank providing lines of credit.

646. Under the more liberal standard, Farmer Mac, in its 2008 10K, p. 24, openly states that CFC is the only private lender -

"Currently the cooperative rural utilities lending space contains only two lenders, the National Rural Utilities Cooperative Finance Corporation ("National Rural") and CoBank, ACB, ("Co Bank") an institution of the Farm Credit System."

CFC is the only private lender (CoBank is a GSE and has no need for Farmer Mac) that qualifies in the more restrictive provisions for the REDLG Loan Program.

647. Mr. English in a December 27, 2004 Wall Street Article titled “Co-op Please With Loan Program” was quoted liberally taking credit for funding the changes in the REDLG Loan Program so that CFC could access federal funds. Some quotes from the article are –

The decision also shows the clout of the group Mr. English leads, an obscure but effective lobbying organization in Washington whose scope long ago extended to issues far beyond electrifying the countryside.

Consequently, the co-ops decided to organize their own private bank, the National Rural Utilities Cooperative Finance Corp., or CFC, located in Herndon, Va. The Agriculture Department agency, which Congress ultimately retained and renamed the Rural Utilities Service, helped the CFC get started by giving co-ops even sweeter government-backed loans if they would promise to wean themselves from federal assistance and get future loans at the private bank.

The loans recently announced by the Bush administration would blur the distinction between private lenders, such as the CFC, and government ones, such as the Agriculture Department's Rural Utilities Service. It would for the first time allow the co-ops' private bank to issue government-backed loans. In return for the lower interest rates, the CFC will pay a fee into a new fund that is expected to generate \$270 million. Local cooperatives could use the fund to help their communities raise money for projects, such as pitching in on buying a new fire engine.

Defendant English had turned his heretofore legal efforts to obtain money for rural electric coops to the knowingly unlawful purpose of evading CFC's bankruptcy and supporting his favorite racketeering enterprise.

648. Defendant Petersen in an industry publication stated:

“Today's closing [June 14, 2005] is another example of the commitment of CFC, **NRECA** and the USDA to work together for the benefit of rural America,” Petersen said. “The REDL&G program funds are used for economic development projects that provide job creation, needed community facilities and availability to medical resources for rural residents served by rural electric cooperatives and telephone systems. CFC looks forward to supporting this worthwhile initiative as an important component of CFC's mission to serve our member/owners and help them strengthen their communities.” *See CFC's Solutions Vol. 7, No. 24*

649. As stated in paragraph 565, Farmer Mac made unlawful investments of CFC \$1.3

Billion in CFC before Farmer Mac's charter was altered. Upon information and belief, it was Defendant English's long standing relationship with Henry D. Edelman, the former president of Farmer Mac that resigned in May of 2008, which resulted in –

- a. Farmer Mac suborning into making unlawful investments in CFC; and
- b. Mr. Edelman lobbying for the changes in Farmer Mac's charter.

Farmer Mac was established and Mr. Edelman became Farmer Mac's first president when Defendant English was the chair of the House Agriculture Committee.

650. The fact that CFC could not wait until Farmer Mac's charter was changed and knowingly access Farmer Mac funds in violation of Federal regulations indicates the dire financial condition of CFC when CFC first accessing Farmer Mac's funds in July of 2005.

651. Mr. James M. Andrew, the Administrator, Rural Utilities Service, whom approved a majority of the REDLG loans to CFC and cut-off RUS loans to ICC formerly served 16 Years on NRECA's board and 2 years on the board of CFC.

652. Upon information and belief, Defendant English engineered the appointment of Mr. Andrew and others subject to his influence to key places in the USDA to facilitate rural coops access to federal funds.

653. Upon information and belief, Defendant English used his influence which is the influence of NRECA to –

- a. Access Federal funds for CFC knowing full well CFC's actual financial condition; and
- b. To cut-off nearly a \$100 Million in committed loans from RUS to Vitelco to assist CFC in its retaliatory and extortionary agenda against Jeff Prosser and management loyal to Jeff Prosser.

Cronyism reigns in the Farm Programs with Defendant English one of the most powerful participants whom knowingly participated in unlawful acts of CFC when the racketeering enterprise was mismanaged.

654. Defendants NRECA and English are associates-in-fact in the conduct of CFC's racketeering enterprise, to use RTFC as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, NRECA and English are associates-in-fact in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser.

Culpability of Greenlight

655. For purposes of this section paragraphs 8 through 654, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which Greenlight materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

656. Generally, upon the execution of the Intercreditor Agreement, Greenlight –

- a. Breached an agreement to negotiate in good faith with Jeff Prosser for which Greenlight received consideration;
- b. Immediately, notwithstanding stipulations to the contrary wrongfully sought a judgment against ICC (new ICC) which was not a party to the litigation;
- c. Reversed course (went from June of 2004 through October of 2005 without seeking judgment) of its stated objective to preserve ICC's enterprise value and immediately adopted an attitude of destroying ICC; and
- d. As set forth hereinabove, committed many acts including some not set

forth herein, acting in concert with RTFC, which have only one end, to destroy Jeff Prosser.

657. The Chapter 7 Trustee is Greenlight's agent and any act done by the Chapter 7 Trustee should be attributed to Defendant Greenlight.

658. It is evident that Greenlight, a hedge fund and corporate raider, accepted a direct obligation for payment from a secure creditor in a superior position, a beneficiary of champerty (except that recovery was guaranteed by RTFC), with full knowledge of CFC's/RTFC's retaliatory and extortionary objectives against Jeff Prosser and management loyal to Jeff Prosser.

659. Greenlight knew of Jeff Prosser's allegations regarding the Embezzlement Scheme, nevertheless, for money, joined RTFC with full knowledge of CFC's/RTFC's retaliatory and extortionary objectives against Jeff Prosser and management loyal to Jeff Prosser.

660. Furthermore, Greenlight knew before entering the Intercreditor Agreement about the 2001 Loan authentication issue. If Greenlight so denies, Greenlight can not deny that it received a February 27, 2006 letter with extensive documentation about the False 2001 Loan Agreement. Nevertheless, Greenlight acted in concert with RTFC, indeed Greenlight was the prime actor (with RTFC relying upon Greenlight to accomplish certain ends like placing ICC into bankruptcy), with full knowledge of CFC's/RTFC's retaliatory and extortionary objectives against Jeff Prosser and management loyal to Jeff Prosser.

661. The August 4, 2007 hearing in which Greenlight's counsel and RTFC's Counsel made statements in the record (see paragraph 261 hereinabove) rejecting the \$620 Million Silver Point Financing; however, not upon economic grounds but upon grounds that Jeff Prosser was going to retain an equity interest. unequivocally establishes the conspiracy to destroy Jeff Prosser and management loyal to Jeff Prosser.

662. Defendant Greenlight are conspirators with CFC acting through RTFC committing numerous overt acts to further CFC's retaliatory and extortionary objectives against Jeff Prosser, Jeff Prosser's Family, and management loyal to Jeff Prosser.

Culpability of the Fulbright Group

663. For purposes of this section paragraphs 8 through 662, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which the Fulbright Group materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

664. Generally, Defendant Fulbright Group's culpability is premised in part upon the following:

a. Fulbright purports to represent RTFC while simultaneously representing Defendants CFC, CFC's Management Defendants, and Defendant Stratton¹²³, the designated Sarbanes Oxley Financial Expert for CFC. Such is an irreconcilable conflict representing the legitimate Enterprise, the parties operating the racketeering enterprise, and others named as conspirators.

b. A bedrock principle recognized in Rule 1.13(a) of the ABA Model Rules of Professional Conduct is that a lawyers' **responsibility is to the corporation**, and not to the corporate directors, officers or other corporate agents with whom they necessarily communicate in representing the corporation. The Fulbright Group has in fact been representing CFC and its management under the guise and pretext of representing RTFC.

c. RTFC and thus the Fulbright Group stood in a fiduciary position to

¹²³ Defendant Gerber filed a bar grievance alleging that the Letter written to CFC's purportedly independent SOX Financial Expert was written to a party represented by Defendant Fulbright Group.

ICC¹²⁴, an RTFC Member, whose membership was unlawfully terminated as part of RTFC's retaliatory and extortionary actions.

d. The Fulbright Group had actual knowledge of systematic embezzlement of RTFC by CFC as well as the False 2001 Loan Agreement; nevertheless, Defendant Fulbright itself filed the False 2001 Loan Agreement, an unlawful act, willingly participated (and is still participating in said acts) in acts intended to destroy Jeff Prosser and management loyal to Jeff Prosser.

e. As RTFC's counsel, the Fulbright Group had a duty to seek redress against CFC for systematic embezzlement of RTFC by CFC and further, to not participate in extortionary and retaliatory actions of CFC to conceal the systematic embezzlement of RTFC by CFC.

f. In fact, the Fulbright Group intentionally misrepresented to the Federal District Court in the U.S. Virgin Islands and the Bankruptcy Court in the U.S. Virgin Islands that Fulbright was and is representing RTFC when in fact Fulbright was representing the interest of CFC in continuing and concealing the racketeering enterprise. Fulbright committed numerous acts set forth above misleading all that Fulbright was representing RTFC.

665. Defendant Gerber openly boasted about deploying the Texas waste land theory (destroy everything) in representing RTFC.

666. With respect to Plaintiff Raynor, the Fulbright Group, did –

a. File a grievance with the Nebraska Bar Association against Plaintiff Raynor intending to interfere with Plaintiff Raynor's ability to earn a living for writing a

¹²⁴ A coop is an association that is deemed to be a group of individuals acting together through the cooperative entity for their common good.

letter to CFC's Sarbanes-Oxley expert informing him as to the Embezzlement Scheme which letter was copied to the SEC;

b. Publicly advertise the filing of the grievance in an intentional violation of the very rules Defendant Fulbright was seeking to avail itself of (*see* Case 3:06-bk-30009-JKF, Doc 2039, Filed 09/05/08); and

c. In the same document, a Motion in Limine, did engage in a vicious and untruthful assault upon the character of Plaintiff Raynor.

667. Defendant Fulbright Group clearly went beyond the boundary of lawful representation to become conspirators in the conduct of CFC's racketeering enterprise, to use RTFC

as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendant Fulbright Group are conspirators in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser.

Culpability of the CFC's Directors/Officers

668. For purposes of this section paragraphs 8 through 667, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which the CFC's Directors/Officers materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

669. Generally, CFC's Financial Expert, is not in fact independent¹²⁵, because, under information and belief, –

¹²⁵ 17 CFR 240.10A-3 defines independence in terms of stock ownership which makes every director of CFC independent because CFC issues no stock and is owned by Coops. However, Stratton has a long history with coops which are very much indebted to NRECA, Glenn English, and CFC for their very existence.

a. Stratton has been a director of East Kentucky Power Cooperative (“EKPC”) since 1990 (17 years) and was the Board Chairman when he became CFC’s Financial Expert; and

b. A director of Shelby Energy Cooperative (“Shelby”) since 1987 (20 years);

c. EKPC generates and distributes electricity while Shelby is a patron and member of EKPC distributing power generated by EKPC within its territory (Shelby is dependent upon EKPC);

d. EKPC was in serious financial trouble in 2003 and 2004;

e. EKPC was salvaged because of loans from CFC and RUS;

f. EKPC did not meet the financial requirements for CFC loans;

g. Defendant English’s influence was critical to turning on the RUS money spigot for EKPC; and

h. When CFC announced Defendant Stratton’s appointment on November 6, 2006, EKPC was the beneficiary of loans on terms more favorable than other CFC borrowers.

EKPC received consideration for CFC’s Financial Expert’s agreement to serve as the Financial Expert.

670. CFC’s Financial Expert was sent and received a letter which included the following statement:

“The highlights of this letter:

1. CFC, on a fair market basis, is bankrupt;
2. CFC has systematically defrauded RTFC and thus, RTFC’s members;
3. The Federal Government is placing billions of taxpayers’ money at risk by refinancing CFC’s indebtedness; and
4. CFC’s activities are replete with violations of numerous laws.

CFC is an *unregulated* company imbued with fraudulent practices and staffed with incompetent management. Further, CFC is accessing funds of the public through public debt instruments and taxpayers' money."

The 15 page letter completely followed up the foregoing statement with documents and cogent explanations which set forth the Embezzlement Scheme.

671. CFC's Financial Expert was on notice of the Embezzlement Scheme and aspects of CFC financial fraud but –

- a. Did nothing to curtail the fraud;
- b. Approved for issuance financial statements that the CFC Financial Expert knew to be fraudulent;
- c. Relied upon the hope-for success of CFC's retaliatory and extortionary actions to bury his failure to discharge his legal responsibilities pursuant to Sarbanes-Oxley Act; and
- d. In fact, representing to the investing public that CFC has a Financial Expert is yet another fraud of CFC upon the investing public and the government because Defendant Stratton is not functioning as an independent Financial Expert as is required by law.

672. Upon information and belief, the CFC's Directors/Officers Defendants are –

- a. As office holders legally responsible for CFC's racketeering acts to the extent that they have actual knowledge or with reasonable diligence would have had actual knowledge of the elements of the racketeering enterprise;
- b. Each office holder has in-depth knowledge and experience of coop principles;
- c. With reasonable diligence, each of the office holders would have actual

knowledge of the Embezzlement Scheme and the other Racketeering Activities denoted herein;

d. Each of the office holders treats their office as ceremonious and decorous position and act in woeful disregard of the power and authority of their positions and as a rubber stamp for CFC's Management Defendants; and

e. The office holders have actual knowledge of the foregoing facts set forth herein or are legally responsible for having actual knowledge thereof.

673. ICC represented a material loan (2.59% as of May 31, 2009) with material loss potential and the CFC's Directors/Officers Defendants had to have actual knowledge of the status of the ICC Loan if they were properly discharging the duties of their office.

674. Defendants CFC's Directors/Officers Defendants, including CFC's Financial Expert, are conspirators in the conduct of CFC's racketeering enterprise, to use RTFC as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendants CFC's Directors/Officers Defendants, including CFC's Financial Expert, are conspirators in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser.

Culpability of the Chapter 11 Trustee, the Consultants, Springel's Lawyers & Springel

675. For purposes of this section paragraphs 8 through 674, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every act detailed above in which the any of these Defendants materially participated in or committed acts to advance the racketeering enterprise or Racketeering Activities.

676 The Chapter 11 Trustee, Stan Springel, and Defendants Consultants and

Springel's Lawyers had the means, the opportunity, the duty and the forum to seek redress for –

- a. The tens of millions stolen from ICC and Vitelco by CFC acting through RTFC;
- b. The unlawful foreclosure;
- c. The use of the False 2001 Loan Agreement; and
- d. To set aside the Greenlight Judgments which are based upon financial projections *impossible to achieve*.

These actions would have maximized the ICC Estate, the ICC-LLC Estate and the EmCom Estate.

677. In lieu of fulfilling their duty, the Chapter 11 Trustee, Stan Springel, and Defendants Consultants and Springel's Lawyers intentionally and knowingly chose to act under the color of law to –

- a. Protect CFC's racketeering enterprise and Racketeering Activities; and
- b. Join CFC's and Greenlight's conspiracy to assail Jeff Prosser, his family, and management loyal to Jeff Prosser with an intentional pattern of conduct intended to be extortionary and retaliatory.

678. The Chapter 11 Trustee, Stan Springel, and Defendants Consultants and Springel's Lawyers have engaged in a public campaign against Jeff Prosser and former management that consists of lies and misrepresentations, which include –

- a. Publicly made statements that Jeff Prosser violated the Foreign Corrupt Practice Act;
- b. Publicly presented an unfunded liability as a racketeering act of misappropriation of \$20 Million from ICC Pension plans;

c. Publicly stated that Jeff Prosser stole over \$100 Million even though the contra-equity account is and always has been disclosed in ICC's audits with footnotes providing detail;

d. Publicly stated that Jeff Prosser committed tax fraud when, in fact, information in their possession demonstrated that Jeff Prosser overpaid his income tax liability;

e. Publicly stated that Plaintiffs Dawn Prosser and Jeff Prosser had defrauded ICC in a continuous pattern of fraud commencing in 1989 even though they wholly owned ICC;

f. Publicly stated that Jeff Prosser defrauded ICC on the transfer of the Palm Beach house even though they had actual knowledge that the transfer was fully disclosed in ICC' audited Financial Statements;

g. Publicly represented to ICC employees that Jeff Prosser was going to prison for twenty (20) years for the above referenced frauds;

h. Publicized statements that Jeff Prosser had numerous off-shore banking accounts;

i. Stated that all the audited financial statements were wrong because Jeff Prosser was able to suborn the outside auditors even though testimony of their current employee refuted such misrepresentations; and

j. Cause many of the foregoing misrepresentations to be included in the formal report of David Marshall Nissman, the PSC Hearing Examiner.

679. Upon information and belief –

a. Springel's lawyers did –

- i. Unlawfully access Jeff Prosser's email accounts;
- ii. Conspired with Stelzer to unlawfully access Jeff Prosser's Credit Card Statements;
- iii. Presented testimony of Stelzer that they knew to be false; and
- iv. Presented testimony of the only other key witness knowing that one of the Consultants was having an extra-marital affair with her.

b. Springel, the Consultants and Springel's Lawyers have taken dramatically opposing positions such as –

- i. Maintaining that Jeff Prosser should be taxed on all sums added to the contra-equity account by producing an expert witness report thereon and making a presentation to the Internal Revenue Bureau while implementing turnover suits and fraudulent conveyance actions under the proposition that the sums were debts owed by Prosser to the Company;

- ii. Duplicate suits over the same sums by suing Jeff Prosser and also others.

c. Upon information and belief Defendants Consultants and Springel's Lawyers in fact authored the report by the PSC Hearing Examiner David Nissman which 63 page report was completed by an examiner that had no telecommunications experience whatsoever over a period of approximately six weeks start to end, including public hearings.

680. Springel and Springel's Lawyers, based upon the work product of the Consultants, have –

- a. Filed over seventy adversary proceedings without changing an allegation

in the complaint other than the name of the Defendant and the sums due;

b. Sued one of Jeff Prosser's attorneys, Robert Craig, for all the fees received, intentionally valuing his services at \$0.00, indicating malice;

c. Sued one of Jeff Prosser's attorneys, Robert Craig, for all the fees received, having already pled in separate suits that such sums were properly due from Jeff Prosser, indicating malice;

d. Sued Plaintiff Raynor for all of his fees received, valuing his services at \$0.00, indicating malice;

e. Sued Plaintiff Raynor for fees received, which any obligation to repay the same has been clearly the subject of a Discharge Order;

f. Sued Raynor's law firm for expenses billed and received as a means to circumvent Raynor's Discharge Order;

g. Sued for sums that are clearly time barred; and

h. Failed to offset sums sought against third parties for actual amounts billed and collected by ICC from ICC affiliates.

681. The Chapter 11 Trustee and Defendants Consultants and Springel's Lawyers are conspirators in the conduct of CFC's racketeering enterprise, to use RTFC as a means to engaged in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendants CFC's Directors/Officers Defendants, including CFC's Financial Expert, are conspirators in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser.

Culpability of Defendants Deloitte and Johnston

682. For purposes of this section paragraphs 8 through 681, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which the Defendants Deloitte and Johnston materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

683. Defendants Deloitte's and Johnston's wrongful conduct involves the following acts:

a. Issuance of Audit Reports for RTFC's Financial Statements for fiscal years 2005, 2006, 2006, 2007 and 2008 for which Deloitte knew the Financial Statements understated RTFC's entitlement to patronage income for those years.

b. Issuance of Audit Reports for RTFC's Financial Statements for fiscal years 2005, 2006, 2006, 2007 and 2008 for which Deloitte knew the Financial Statements failed to record a material receivable due from CFC to RTFC equal to sums cumulatively defalcated by CFC from RTFC.

c. Issuance of Audit Reports for CFC's Financial Statements for fiscal years 2005, 2006, 2006, 2007 and 2008 (the "Deloitte Audits") for which Deloitte knew concealed the systematic embezzlement of RTFC by CFC by:

- (i) not conforming to GAAP in the presentation of Segment Information¹²⁶;
- (ii) not conforming to GAAP in the Fair Value disclosures;
- (iii) not conforming to GAAP in the presentation of Related Party

¹²⁶ Deloitte justified the switch back to the improper segment reporting mythology stating in the 2005 10K, FN 15, p. 104, that "In November 2004, management changed the segment presentation to better reflect the reports it is currently using to manage the business." Nevertheless, CFC as a registrant by law, 15 U.S.C. §§ 78m(b)(2) - (7), is required to keep books in order to issue GAAP compliant financial statements.

disclosures; and

(iv) not conforming to GAAP by presenting CFC and RTFC as a single entity pursuant to FIN 46(R) which is not applicable to CFC and clearly used as a means to conceal the Embezzlement Scheme.

d. Issuance of unlawful audits of CFC and RTFC because Randall B. Johnston's, the audit partner in charge at Deloitte, involvement violated requirements for audit partner rotation (*15 U.S.C. 78j-1(j)*) as implemented by *17 C.F.R. § 210.2-01* which requires a 5-year time out period. Randall B. Johnston, the audit partner in charge at Deloitte, was the audit partner for the audit of CFC-RTFC's account at Arthur Andersen LLP. Deloitte first acquired institutional knowledge when David Bloch informed Deloitte's practice risk manager in July of 2007.

e. Issuance of the Deloitte Audits with footnotes that intentionally failed to accurately disclose:

i. the CFC-ICC dispute; and

ii. the RTFC- Greenlight relationship including the Intercreditor agreement and related obligations.

f. Intentionally failing to account for two catastrophic losses experienced by CFC in the Deloitte Audits: a loss on the CoServ loan of at least \$290 Million in fiscal year 2003 (which makes every financial statement thereafter misleading) and the loss on the ICC loan of at least \$350 Million.

g. Upon information and belief, preparing and filing tax returns for CFC (Form 990) that Deloitte knew failed to report unrelated business income for the misappropriated RTFC patronage income and which violated *26 U.S.C. § 501(c)(4)*

prohibition against benefits inuring to any member.

h. Upon information and belief, preparing and filing tax returns for RTFC that Deloitte knew to be false.

684. With respect to point (d) above, the unlawful audit, Deloitte purports to rely (Deloitte did not acquire institutional knowledge of Johnston's past relationship with CFC until July of 2007) upon an answer to frequently asked questions by the SEC's Chief Accountant when the statement states –

“The answers to these frequently asked questions represent the views of the Office of the Chief Accountant. They are not rules, regulations or statements of the Securities and Exchange Commission. Further, the Commission has neither approved nor disapproved them.”

While ignoring –

17 CFR 210.2-01(e) –

(e)(1) Transition and grandfathering. Provided the following relationships did not impair the accountant's independence under pre-existing requirements of the Commission, the Independence Standards, Board, or the accounting profession in the United States, the existence of the relationship on May 6, 2003 will not be deemed to impair an accountant's independence:

...

(v) Until the first day of the issuer's fiscal year beginning after May 6, 2003 by a "lead" partner and other audit partner (other than the "concurring" partner) providing services in excess of those permitted under paragraph (c)(6) of this section. An accountant's independence will not be deemed to be impaired until the first day of the issuer's fiscal year beginning after May 6, 2004 by a "concurring" partner providing services in excess of those permitted under paragraph (c)(6) of this section. For the purposes of calculating periods of service under paragraph (c)(6) of this section:

(A) For the "lead" and "concurring" partner, the **period of service includes time served as the "lead" or "concurring" partner prior to May 6, 2003**; and (Emphasis added)

And

SEC RELEASE NO. 33-8183, 2003 SEC LEXIS 241 which on page 41 states –

“In order to allow firms to establish an orderly transition of their audit engagement teams, the Commission is establishing transition provisions related to the partner rotation requirements. Since the lead partner was previously subject to rotation requirements, these rotation requirements should not impose a significant incremental burden on accounting firms. **Accordingly, the rotation requirements applicable to the lead partner are effective for the first fiscal year ending after the effective date of these rules. Furthermore, in determining when the lead partner must rotate, time served in the capacity of lead partner prior to the effective date of these rules is included.** For example, for a lead partner serving a calendar year audit client, if 2003 was that partner's fifth, sixth or seventh year as lead partner for that audit client, he or she would be able to complete the current year's audit and he or she must rotate off for the 2004 engagement.”

685. Without Deloitte’s unlawful audits which materially depart from GAAP and knowingly include materially overstated toxic loans to avoid loan losses, CFC would have long ago financially collapsed – long before the Federal government reached over \$5 Billion.

686. Defendants Deloitte and Johnston are conspirators in the conduct of CFC’s racketeering enterprise, to use RTFC as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendants Deloitte and Johnston are conspirators in the conduct of CFC’s retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser’s family, and management loyal to Jeff Prosser by conspiring to misreport events surrounding the ICC loan.

Culpability of Defendant Ernst

687. For purposes of this section paragraphs 8 through 686, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which the Defendant Ernst materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

688. Defendant Ernst’s wrongful conduct involves the following acts:

- a. Issuance of Audit Reports for RTFC’s Financial Statements for fiscal

years 2002, 2003, and 2004 for which Ernst knew the Financial Statements understated RTFC's entitlement to patronage income from CFC for those years.

b. Issuance of Audit Reports for RTFC's Financial Statements for fiscal years 2002, 2003, and 2004 for which Ernst knew the Financial Statements failed to record a material receivable due from CFC to RTFC equal to sums cumulatively defalcated by CFC from RTFC.

c. Issuance of Audit Reports for CFC's Financial Statements for fiscal years 2002, 2003, and 2004 for which Ernst knew concealed the systematic embezzlement of RTFC by CFC by

- (i) not conforming to GAAP in the presentation of Related Party disclosures;
- (ii) not conforming to GAAP in the Fair Value disclosures;
- (iii) not conforming to GAAP by Combining CFC and RTFC as a single entity for presentation of Financial Statements for fiscal years 2002 and 2003; and
- (iv) for fiscal years 2004, not conforming to GAAP by presenting CFC and RTFC as a single entity pursuant to FIN 46(R) which is not applicable to CFC and clearly used as a means to conceal the Embezzlement Scheme.

d. Intentionally failing to account for the catastrophic losses experienced by CFC in 2003: a loss on the CoServ loan of at least \$290 Million in fiscal year 2003. The disclosure of the CoServ loan makes every financial statement after fiscal year 2003 misleading. This is an ongoing fraud that results in an overstatement of adjusted members' equity of more than twenty-five percent for fiscal year ended May 31, 2008.

e. Upon information and belief, preparing and filing tax returns for CFC (Form 990) that Ernst knew failed to report unrelated business income for the

misappropriated RTFC patronage income and which violated 26 U.S.C. § 501(c)(4) prohibition against benefits inuring to any member.

f. Upon information and belief, preparing and filing tax returns for RTFC that Ernst knew to be false.

689. Ernst knew of the systematic embezzlement of RTFC by CFC because Ernst conform the presentation of Segment Information to GAAP stating, in the 2002 Form 10-K, page 97, that:

“The Telecommunications system income statement **now represents** the total earned on telecommunications loans at both the CFC and RTFC levels. The electric system income statement **is now only** the amount earned on loans to electric member systems.” (Emphasis added)

Nevertheless, Ernst provided Audit Reports for SEC documents which did not disclose the embezzlement and issued RTFC Audit Reports Ernst knew to be wrong. These were overt acts taken to conceal the fraud from the investing public and RTFC Telephone members by not affirmatively disclosing that CFC is misappropriating RTFC’s patronage income.

690. CFC’s money laundering scheme could not succeed without Ernst’s willingness to over look the Embezzlement Scheme and CFC’s tax liability for unrelated business income. Upon information and belief Ernst prepared tax returns it knew to be false and also, treated CFC as a tax exempt entity knowing that CFC did not meet the operational test. Nevertheless, even if Ernst did not prepare the tax returns, as CFC’s auditor, Ernst **had to due to perform a tax analysis** and accrue an income tax liability as if CFC had properly filed its tax returns and paid income tax.

691. Defendant Ernst had an obligation to perform a ‘going concern’ evaluation of CFC. Accounting literature provides:

The auditor has a responsibility to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited (hereinafter referred to as *a reasonable period of time*). The auditor's evaluation is based on his or her knowledge of relevant conditions and events that exist at or have occurred prior to the date of the auditor's report. *See AU § 341A, ¶ 2.*

AU § 341A, ¶ 5 requires that Ernst should have sought “Confirmation with related and third parties of the details of arrangements to provide or maintain financial support.”

692. CFC’s financial condition as of May 31, 2004, which was entirely dependent upon the Telephone Loan Portfolio earnings. Ernst knew of CFC’s dire financial circumstance because –

- a. There was a clear expectancy that ICC’s foreclosure commenced in June 1, 2004 would result in ICC not paying interest before the end of the next fiscal year which was then a \$600 Million loan – a material portion to the Telephone Loan Portfolio;
- b. Iowa Telecommunications was in the process of refinancing a \$615 Million RTFC loan through a public offering; and
- c. Other loans within the Telephone Loan Portfolio were in the process of being refinanced that together resulted in a \$1.1 Billion decline in the Telephone Loan Portfolio, CFC’s only loan portfolio with a positive interest spread, over the next 6 months which means the interest paying Telephone Loan Portfolio was about to decrease by over \$1.7 Billion.

693. The only way for CFC to survive a major readjustment of its profitable loan portfolio was by averaging down the cost of funds (since so much of CFC’s Electric Loan Portfolio was invested in long-term fixed or variable loans) by accessing Federal Funds.

694. Upon information and belief, Ernst knew and relied upon CFC’s expectation to –

- a. Access the RELG Loan program;

b. 7 *CFR* § 1720.6(a) required the submission of three fiscal years audited financial statements, so Ernst knew in making the loans the federal government would in fact be relying upon Ernst's prepared audits for FYs 2002, 2003 and 2004; and

c. for all the reasons stated herein Ernst knew such audits were not in conformance with GAAP and masked the Embezzlement Scheme and the CoServ Loan Loss.

695. Ernst is part of the conspiracy until Ernst withdraws its previously issued audit opinions:

Our discussion thus far illustrates that for many years we have recognized the existence of an accountant's duty to correct its certified opinions, but never squarely held that such a duty exists for the purposes of primary liability under § 10(b) of the 1934 Act and Rule 10b-5. Presented with an opportunity to do so, we now so hold. Specifically, we hold that an accountant violates the "duty to correct" and becomes primarily liable under § 10(b) and Rule 10b-5 when it (1) makes a statement in its certified opinion that is false or misleading when made; (2) subsequently learns or was reckless in not learning that the earlier statement was false or misleading; (3) knows or should know that potential investors are relying on the opinion and financial statements; yet (4) fails to take reasonable steps to correct or withdraw its opinion and/or the financial statements; and (5) all the other requirements for liability are satisfied. See Overton v. Todman & Co., 478 F.3d 479, 486-487 (2d Cir. N.Y. 2007)

696. Defendant Ernst is a conspirator in the conduct of CFC's racketeering enterprise, to use RTFC as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendant Ernst is a conspirator in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser by conspiring to misreport events surrounding the ICC loan.

Culpability of the Credit Rating Agencies

697. For purposes of this section paragraphs 8 through 696, inclusive, are incorporated herein and Plaintiffs are not endeavoring to repeat each and every overt act detailed above in which the Defendants **Credit Rating Agencies** materially participated in or committed to advance the racketeering enterprise or Racketeering Activities.

698. Defendants NRECA and English passed special purpose legislation that has been the reason that CFC has accessed \$3 Billion in long-term, low rate, REDLG Loans.

699. CFC was not and would not be eligible for such loan programs but for the complicity in accounting fraud of –

- a. Its auditors, Defendants Ernst, Deloitte and Johnston; and
- b. Defendants Credit Rating Agencies.

However, it doesn't hurt that Defendants NRECA and English can so load the RUS with parties that are more than sympathetic¹²⁷ to CFC.

700. The REDLG Loan Program requires –

By statute CFC **must be investment grade** -

7 USC § 940c-1(3) provides The Secretary may deny the request of a lender for the guarantee of a bond or note under this section if the Secretary determines that— ...
(B) the bond or note issued by the lender would not be investment grade quality without a guarantee; or”

By regulation CFC **must be investment grade** -

7 CFR § 1720.5(b)(2) – “The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee”

By regulation CFC **can not borrow unless CFC is rated Investment Grade** -

7 CFR § 1720.8(a)(7) – “The applicant shall provide evidence of an investment grade rating from a Rating Agency for the proposed guaranteed bond without regard to the guarantee”

7 CFR § 1720.8(b) – “The Secretary *shall not issue a guarantee* if the applicant

¹²⁷ 7 CFR § 1720.6(b)(3) – “The applicant's demonstrated performance of financially sound business practices”

is unwilling or unable to satisfy all requirements.” (Emphasis added)

The above requirements support Plaintiffs’ assertion that Defendants English and NRECA passed special purpose legislation for CFC with standards that CFC can not meet but for fraud.

701. There is a dramatic divergence in ratings assigned to CFC by National Recognized Statistical Rating Organization (“NRSROs”), in that -

a. Egan Jones Ratings Company (“Egan Jones”), since December 21, 2007 recognized as a NRSRO¹²⁸, rates CFC as a “junk bond”, a “B+” rating as of Feb. 4, 2007 which has been downgraded to a “B” rating as of March 6, 2009.

b. Defendant Credit Rating Agencies rate CFC as follows: Moody’s assigns CFC an “A2” rating, S&P assigns CFC an “A” rating, and Fitch assigns CFC an “A-” rating.

Egan Jones does something with respect to CFC that the Defendant Credit Rating Agencies do not do – Egan Jones compares CFC’s performance to the performance of a peer group.

702. This divergence is material and demonstrates the difference between independent ratings and ratings purchased¹²⁹ from the Defendant Credit Rating Agencies. For instance, using S&P’s scale here is the difference in ratings -

AAA
AA+
AA
AA-
A+
A
A-
BBB+
BBB
BBB-

INVESTMENT GRADE 

¹²⁸ SEC Release No. 57031.

¹²⁹ Egan Jones is not compensated by the companies being rates as are the Defendant Credit Rating Agencies.

BB+
BB
BB-
B+
B

Thus, the difference between the Defendant Credit Rating Agencies and Egan Jones is dramatic – in the case of S&P, CFC is rated nine (9) notches¹³⁰ further up on the scale.

703. This case departs from the heavy criticism the Defendant Credit Rating Agencies have received over the collapse of the collateralized debt obligation (CDO) market. Just like whistleblower Harry Markopolos informed the SEC on Bernie Madoff, the largest known Ponzi scheme in history, the Plaintiffs have been so informing the Defendant Credit Rating Agencies¹³¹.

704. For example, Moody's was informed as follows:

a. In the first quarter of 2006, Moody's was informed of the Embezzlement Scheme and CFC's financial dependency upon the Telephone Loan Portfolio. The document submitted provided pages from the RTFC audits and CFC 10Ks so no one had to rely upon conclusionary statements.

b. In a series of communications, all backed with documents, it was demonstrated how CFC was losing money from the Electric Loan Portfolio and in essence, surviving only because of the embezzlement from RTFC;

c. In a move based upon frustration, Plaintiff Raynor sent a 113 page letter to each member of Moody's Board of Directors which included copies of all prior communication; and

¹³⁰ 5 notches further up and CFC would have the highest rating assignable.

¹³¹ Egan Jones was not sent the same information because Egan Jones did not provide CFC a investment grade rating.

d. With no expectation of a change in course but in contemplation of adding the Credit Rating Agencies as Defendants, on April 22, 2009, Plaintiff Raynor sent each credit rating agency a memo entitled *Why Egan-Jones assigned rating of B to CFC is too generous!*, with -

- i. CoServ's Plan of Reorganization providing irrefutable documentation that CFC was carrying a bloated loan balance on its books;
- ii. How CFC was currently misreporting the CoServ Loan in order to amortize its loan loss in a departure from GAAP;
- iii. An explanation and the supporting transcript (with additional documentation) establishing that CFC had no recovery on the ICC Loan;
- iv. The Intercreditor Agreement; and
- v. How Defendant Lilly directly lies to analyst in the January 2009 conference call with a supporting transcript.

The only response by Defendants Credit Rating Agencies to the April 2009 communication is that Fitch announced a change in CFC's rating; moving CFC from an "A" rating to an "A-" rating.

705. Each of the Defendant Credit Rating Agencies has been sent credible information that demonstrates that CFC should not be investment grade. Furthermore, each of the Defendant Credit Rating Agencies have access, and have exercised that access, to CFC's accounting records and supporting documentation that is not made available to any other analyst or investor.

706. While Plaintiffs do not have to ascribe a reason for the Defendants Credit Rating Agencies misreporting, it is believed that NRECA and English are able to motivate large Electric Members which directly issue securities to knowingly and intentionally issue dramatically CFC

inflated ratings in utter disregard of the investing public and U.S. Government.

707. Upon information and belief the reason why CFC has been able to maintain inflated ratings is because the Defendants Credit Rating Agencies knew of CFC's capability to access Federal funds.

708. Upon information and belief the reason why CFC has been able to maintain inflated ratings is because the Defendants Credit Rating Agencies anticipate that Defendants will crush the Plaintiffs knowing that CFC's capability to raise money during its retaliatory and extortionary campaign against Jeff Prosser, his family and management loyal to Jeff Prosser is critical.

709. Defendants Credit Rating Agencies (Moody's, S&P, and Fitch) are conspirators in the conduct of CFC's racketeering enterprise to use RTFC as a means to engage in a for profit business under the guise of operating a legitimate coop for purposes of embezzling income from rural telephone companies for the benefit of rural electric companies. Further, Defendant Credit Rating Agencies are conspirators in the conduct of CFC's retaliatory and extortionary conduct directed against Jeff Prosser, Jeff Prosser's family, and management loyal to Jeff Prosser by conspiring to misreport events surrounding the ICC loan.

Summation

710. For all the detail of this pleading this case can be simply summarized as follows:

a. CFC used its dominion and control over RTFC for the Embezzlement Scheme under which rural Telephone Companies were the victims and which is largely proven and established from audited financial statements published by CFC;

b. In order to conceal and disguise the Embezzlement Scheme, CFC caused many departures from GAAP including, but not limited to, the (i) single entity

presentation, (ii) Fair Value disclosures, and segment information;

c. The Embezzlement Scheme makes CFC ineligible for (i) tax exempt status and (ii) coop tax treatment of any sort¹³²;

d. For reasons not explained, CFC charged Electric Members such low rates and provided money under long-term fixed rate basis that CFC had little flexibility to absorb loan losses;

e. When CFC experiences large loan losses CFC has no capacity (not enough income or equity) to recognize loan losses so CFC fraudulently reports loan losses;

f. When CFC's racketeering enterprise is threatened by an owner of a Telephone Company, a victim of the fraud, CFC will go to the ends of the earth to conceal the racketeering enterprise and suppress or quash a whistleblower including (i) calling loans not in default and (ii) altering loan documents and submitting falsified documents in Courts;

g. CFC was in a financial vise with too many loans made on a long-term basis with no ability to adjust rates so that CFC, as it sought to decrease reliance, had to average down CFC's cost of funds;

h. CFC sought government funds as a means to borrow cheaply;

i. To obtain Government funding, CFC had to rely upon its false financial statements;

j. To be effective, CFC had to and did suborn all kinds of parties.

Venue

711. The RTFC loans were always a material portion of the CFC Total Loan Portfolio and the Telephone Loan Portfolio.

¹³² CFC should be subjected to income tax.

712. For instance, the ICC Loan was –

- a. 3.1% of the Total Loan Portfolio in FY 2002 which is larger than CFC Loans in all but 7 states (the closest state¹³³ Illinois had 52 borrowers);
- b. 3.2% of the Total Loan Portfolio in FY 2003 which is larger than CFC Loans in all but 7 states (the closest state Minnesota had 78 borrowers);
- c. 2.7% of the Total Loan Portfolio in FY 2004 which is larger than CFC Loans in all but 9 states (the closest state Florida had 19 borrowers);
- d. 2.53% of the Total Loan Portfolio in FY 2005 which is larger than CFC Loans in all but 13 states (the closest state Utah had 11 borrowers);
- e. 2.66% of the Total Loan Portfolio in FY 2006 which is larger than CFC Loans in all but 12 states (the closest state Oklahoma had 49 borrowers);
- f. 2.72% of the Total Loan Portfolio in FY 2007 which is larger than CFC Loans in all but 10 states (the closest state Arkansas had 30 borrowers);
- g. 2.58% of the Total Loan Portfolio in FY 2008 which is larger than CFC Loans in all but 10 states (the closest state Arkansas had 27 borrowers); and
- h. 2.59% of the Total Loan Portfolio in FY 2009 which is larger than CFC Loans in all but 10 states (the closest state Utah had 11 borrowers).

713. As far as the victims of the Embezzlement Scheme, ICC was one of the largest, if not the single largest, borrowers from RTFC with –

- a. 12.25% of the Telephone Loan Portfolio for FY 2002;
- b. 12.61% of the Telephone Loan Portfolio for FY 2003;
- c. 11.90% of the Telephone Loan Portfolio for FY 2004;

¹³³ Measuring by percentage of loan portfolio – meaning the closest State is the State with the next largest loan portfolio.

- d. 15.87% of the Telephone Loan Portfolio for FY 2005;
- e. 22.57% of the Telephone Loan Portfolio for FY 2006;
- f. 26.50% of the Telephone Loan Portfolio for FY 2007;
- g. 28.50% of the Telephone Loan Portfolio for FY 2008; and
- h. 31.19% of the Telephone Loan Portfolio for FY 2009.

714. Furthermore, ICC closed its first RTFC loan on December 30, 1987 for \$104 Million. RTFC was formed in September of 1987.

715. Upon information and belief, the single largest victim of the Embezzlement Scheme was ICC and therefore, Jeff Prosser.

716. RTFC's retaliatory foreclosure was moved to the Virgin Islands Federal District Court by order dated October 19, 2004.

717. The bankruptcy of ICC-LLC, EmCom and Jeff Prosser commenced in the Virgin Islands in July of 2006 and the bankruptcy of ICC commenced in September of 2007.

718. Nearly all of the unlawful acts or acts serving the retaliatory and extortionary conspiracy that took place under the color of Bankruptcy law took place in the Courts of the Virgin Islands.

Damages

719. Plaintiffs experienced the following damages by reason of the Racketeering Activities:

- a. Plaintiffs Jeff Prosser and Dawn Prosser suffered a loss in the Enterprise Value of ICC and the ICC Affiliates by reason of the Embezzlement Scheme, which

without consideration of the time value of money constitute damages of no less than \$30 Million to \$70 Million or more¹³⁴;

b. Plaintiffs Jeff Prosser and Dawn Prosser suffered a loss of the entire Enterprise Value of ICC and the ICC Affiliates by reason of the Racketeering Activities, including the retaliatory and extortionary conspiracy which continues to this day under color of law in the bankruptcy proceedings. The Enterprise Value as determined by RTFC was \$505 Million in 1998, \$895 Million in 2001, and \$742 Million in 2003. The Silver Point Financing in 2007 had an implied Enterprise Value in excess of \$800 Million. The Enterprise Value should be determined before the damages experienced by such retaliatory and extortionary racketeering actions and without diminution or offset for (i) the RTFC indebtedness which should be deemed paid because of RTFC's falsifying the 2001 Loan Agreement and (ii) Greenlight's judgment based upon a financial forecast impossible to achieve¹³⁵ all of which should have been set aside but for the conspiracy;

c. Plaintiffs Jeff Prosser, Adrian Prosser, and John Raynor did experience a loss to their livelihood¹³⁶ by reason of the Racketeering Activities pursuant to the retaliatory and extortionary conspiracy to quash the whistleblowers; and

d. Plaintiffs Jeff Prosser, Dawn Prosser, Adrian Prosser, and John Raynor by reason of the Racketeering Activities did experience and are continuing to experience a

¹³⁴ The Complaint identifies \$262 Million but for a 5-year period only. ICC share of the \$262 Million is estimated to be between 12% to 15 % of the \$262 Million. There is no way to estimate the sums embezzled after 1987 but before FY 2000; however, it was significant.

¹³⁵ For purposes of computing damages it must be presumed that an appeal premised upon financial forecast impossible to achieve would be rectified upon appeal.

¹³⁶ 18 USC § 1513(e) – “Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, **including interference with the lawful employment or livelihood of any person**, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense”

loss of their reputations, a compensatory property right, as well as the continuing burden and cost of defending themselves from the retaliatory actions of the conspirators which continues to this day.

720. The damages sought and experienced by reason of the Racketeering Activities carried on by CFC, CFC's management and the Conspirators are proper because –

a. The Embezzlement Damages which start in September of 2007 were not and could not have been discovered until late 2002 and continued through May 31, 2005. Any limitation period is equitably tolled because of RTFC's unlawful use of the loans for retaliatory and extortionary ends to suppress and quash Jeff Prosser's will, desire, and capacity to seek redress therefore.

b. The damages to the Enterprise Value did not accrue until September 21, 2007 when ICC was placed into bankruptcy and it became evident that the Chapter 11 Trustee had joined the racketeering conspiracy.

c. Plaintiffs Jeff Prosser's, Adrian Prosser's, and John Raynor's damages for the loss to their livelihood¹³⁷ by reason of Racketeering Activities and conspiracy accrued in October of 2007.

d. Plaintiffs Jeff Prosser's, Dawn Prosser's, Adrian Prosser's, and John Raynor's damages by reason of loss of their reputations and continuing burden for defending the continuous assault thereto partially accruing in October of 2007 and continuing to accrue with each action commenced under the color of law in pursuit of the conspiracy.

¹³⁷ 18 USC § 1513(e) – “Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, **including interference with the lawful employment or livelihood of any person**, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense”

COUNT ONE

RICO: VIOLATION OF 18 U.S.C. § 1962(b)

721. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-720, inclusive, as though fully set forth herein.

722. The Rural Telephone Finance Cooperative (“RTFC”), a rural telephone cooperative lender with over 500 members as of May 31, 2007, is an Enterprise within the meaning of *18 U.S.C. § 1961(4)*.

723. RTFC is engaged in interstate commerce by making loans to rural telephone companies located in 40 or more states. Further, member-borrowers of RTFC which are deemed legally to own the profits of RTFC are generally instrumentalities (common carriers) of interstate commerce.

724. The following Defendants through a pattern of racketeering activity within the meaning of *18 U.S.C. § 1962(b)* maintain, directly or indirectly, an interest in or control of RTFC, an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. The Defendants under *18 U.S.C. § 1962(b)* are: The National Rural Utilities Cooperative Finance Corporation (“CFC”); Sheldon C. Petersen (“Petersen”); John J. List (“List”); Steven L. Lilly (“Lilly”); John M. Borak (“Borak”); John T. Evans (“Evans”); Richard E. Larochelle (“Larochelle”); Lawrence Zawalick (“Zawalick”); and Robin Cara Reed (“Reed”). The foregoing Defendants are collectively referred to as the “**1962(b) Perpetrators.**”

725. The Defendants 1962(b) Perpetrators have acted in violation of *18 USC § 1962(b)* and the Plaintiffs have experienced damages recoverable pursuant to *18 USC § 1964(c)* by reason thereof.

WHEREFORE, with respect to Count One, each Plaintiff asks for:

- A. Judgment in accordance with *18 U.S.C. § 1964(c)* against the 1962(b) Perpetrators in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of 1962(b) Perpetrators' conduct;
- B. Such equitable relief pursuant to *18 USC. § 1964(a)* that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT TWO
RICO: VIOLATION OF 18 U.S.C. § 1962(c)

726. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-725, inclusive, as though fully set forth herein.

727. The 1962(b) Perpetrators were employed by RTFC (the Enterprise) and directly have and continue to participate in and conduct the affairs of RTFC (the Enterprise) through a pattern of Racketeering Activities in violation of *18 USC § 1962(c)*.

728. Defendants National Rural Electric Cooperative Association ("NRECA"), Glenn L. English ("English") and the 1962(b) Perpetrators collectively were and are an association-in-fact that have and continue to participate in the operation and management of the business affairs of RTFC (the Enterprise) through a pattern of Racketeering Activities in violation of *18 USC § 1962(c)*. "**1962(c) Defendants**" shall mean Defendants NRECA and English.

729. With respect to Count Two, each Plaintiff asks for:

- A. Judgment in accordance with *18 U.S.C. § 1964(c)* against the 1962(b) Perpetrators and the 1962(c) Defendants, jointly and severally, in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of the Defendants' conduct in violation of *18 USC § 1962(c)*;

B. Such equitable relief pursuant to *18 USC. § 1964(a)* that the Court deems just and proper; and

A. Attorney's fees and costs according to proof.

COUNT THREE

RICO: A CONSPIRACY TO ACT IN VIOLATION OF 18 U.S.C. § 1962(b)

730. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-729, inclusive, as though fully set forth herein.

731. Each of the following Defendants conspired with the 1962(b) Perpetrators and **1962(c) Defendants** to violate *18 USC § 1962(b)*: Greenlight Capital, Inc. (“Capital”); Greenlight Capital Qualified, L.P. (“Capital Qualified”); Greenlight Capital, L.P. (“Greenlight Capital”); Greenlight Capital Offshore, Ltd. (“Offshore”); Fulbright & Jaworski L.L.P. (“Fulbright”); Toby L. Gerber (“Gerber”); William R. Greendyke (“Greendyke”); Robert A. Caudle (“Caudle”); James P. Duncan (“Duncan”); Cletus Carter (“Carter”); Terryl Jacobs (“Jacobs”); Roger Arthur (“Arthur”); Darryl Schriver (“Schriver”); Reuben McBride (“McBride”); J. David Wasson, Jr (“Wasson”); R. Wayne Stratton (“Stratton”); Alvarez & Marsal LLC (“A&M”); Bryon P. Syml (“Syml”); Vinson & Elkins L.L.P. (“V&E”); Daniel C. Stewart (“Stewart”); James Jay Lee (“Lee”); Deloitte Touché USA LLP (“Deloitte”); Randall B. Johnston (“Johnston”); Ernst & Young LLP (Ernst); Moody's Investors Service, Inc.; Moody's Corp.; McGraw-Hill Companies, Inc. ("McGraw Hill"); and Fitch, Inc. ("Fitch"), and its affiliate, Defendant Fitch Ratings, Ltd. ("Fitch Ratings"). “**Conspirators**” shall all mean the foregoing parties excluding the 1962(b) Perpetrators and 1962(c) Defendants.

732. Each of the Conspirators in conspiracy with the 1962(b) Perpetrators and the 1962(c) Defendants did knowingly join in conspiracy, agreed to commit or assist in the

commission of acts described in *18 USC § 1961(1)*; and knew that their acts were part of a pattern of acts described in *18 USC § 1961(1)*, all in furtherance of maintaining an interest in or control of RTFC in violation of *18 USC § 1962(b)*.

733. With respect to Count Three each Plaintiff asks for:

- A. Judgment in accordance with *18 U.S.C. § 1964(c)* against the Conspirators, the 1962(b) Perpetrators and the 1962(c) Defendants, jointly and severally, in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of Defendants' conduct in violation of *18 USC § 1962(d)*;
- B. Such equitable relief pursuant to *18 USC. § 1964(a)* that the Court deems just and proper; and
- B. Attorney's fees and costs according to proof.

COUNT FOUR
RICO: A CONSPIRACY TO ACT IN VIOLATION OF 18 U.S.C. § 1962(c)

734. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-733, inclusive, as though fully set forth herein.

735. The Conspirators, as set forth in paragraph 731, did conspire with the 1962(b) Perpetrators and 1962(c) Defendants to violate *18 USC § 1962(c)*.

736. Each of the Conspirators in a conspiracy with 1962(b) Perpetrators and 1962(c) Defendants did knowingly join in conspiracy, agreed to commit or assist in the commission of acts described in *18 USC § 1961(1)*; and knew that their acts were part of a pattern of acts described in *18 USC § 1961(1)*, all in furtherance of participating in the operation and management of the business affairs of RTFC (the Enterprise) through a pattern of Racketeering Activities in violation of *18 USC § 1962(c)*

737. With respect to Count Four each Plaintiff asks for:

- A. Judgment in accordance with *18 U.S.C. § 1964(c)* against the Conspirators, the 1962(b) Perpetrators and the 1962(c) Defendants, jointly and severally, in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of Defendants' conduct in violation of *18 USC § 1962(d)*;
- B. Such equitable relief pursuant to *18 USC. § 1964(a)* that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT FIVE
CICO: VIOLATION OF 14 V.I.C. § 605 (a)

738. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-737, inclusive, as though fully set forth herein.

739. The 1962(b) Perpetrators (as defined in paragraph 724 hereof) were employed by RTFC (the Enterprise) and directly have and continue to participate in and conduct the affairs of RTFC (the Enterprise) through a pattern of Racketeering Activities in violation of *18 USC § 1962(c)*.

740. The 1962(c) Defendants (as defined in paragraph 728 hereof) and the 1962(b) Perpetrators collectively were and are an association-in-fact that have and continue to participate in the operation and management of the business affairs of RTFC (the Enterprise) through a pattern of Racketeering Activities in violation of *18 USC § 1962(c)*.

741. With respect to Count Five, each Plaintiff asks for:

- A. Judgment in accordance with *14 V.I.C. § 607(c)* against Defendants CFC, Peterson, Lists, Lilly, NRECA and English in an amount equal to three times the amount of the damages sustained by the Plaintiffs as a result of Defendants' conduct;

- B. Such equitable relief pursuant to *14 V.I.C. § 607* that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT SIX
CICO: VIOLATION OF 14 V.I.C. § 605 (b)

742. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-741, inclusive, as though fully set forth herein.

743. The 1962(b) Perpetrators (as defined in paragraph 724 hereof) violated *14 V.I.C. § 605(b)* — to wit, through a pattern of criminal activity, the foregoing 1962(b) Perpetrators have and continue to maintain, directly or indirectly, control of RTFC (the Enterprise) for purposes of the systematic embezzlement of RTFC by CFC, an unlawful activity.

744. The 1962(b) Perpetrators have knowingly and intentionally acted in violation of *14 V.I.C. § 605(b)* and are liable to each of the Plaintiffs by reason of said actions.

745. Each Plaintiff did suffer injury to their property and/or gainful employment by reason of said violations of *14 V.I.C. § 605(b)*.

WHEREFORE, with respect to Count Six, each Plaintiff asks for:

- A. Judgment in accordance with *14 V.I.C. § 607(c)* against the 1962(b) Perpetrators in an amount equal to three times the amount of the damages sustained by the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to *14 V.I.C. § 607* that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT SEVEN
CICO: VIOLATION OF 14 V.I.C. § 605 (d)

746. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-745, inclusive, as though fully set forth herein.

747. The 1962(b) Perpetrators (as defined in paragraph 724 hereof), the 1962(c) Defendants (as defined in paragraph 728 hereof), and the Conspirators (as defined in paragraph 731 hereof) violated *14 V.I.C. § 605(d)* — to wit, such Defendants did conspire to violate, either directly or indirectly, the provisions of *14 V.I.C. § 605*, subsections (a) and (b).

748. Each Plaintiff did suffer injury to their property and/or gainful employment by reason of said violations of *14 V.I.C. § 605(d)*.

WHEREFORE, with respect to Count Seven, each Plaintiff asks for:

- A. Judgment in accordance with *14 V.I.C. § 607(c)* against each of the Defendants, the 1962(b) Perpetrators, the 1962(c) Defendants, and the Conspirators in an amount equal to three times the amount of the damages sustained by each Plaintiff as a result of Defendants' conduct;
- B. Such equitable relief pursuant to *14 V.I.C. § 607* that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT EIGHT
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 766B

749. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-748, inclusive, as though fully set forth herein.

750. Each of the Defendants', including RTFC, tortious conduct did, and continues to, violate Restatement (Second) of Torts § 766B¹³⁸, *Interference With Contract Or Prospective Contractual Relation*.

750. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlement as set forth in Restatement (Second) of Torts § 766B, *Interference With Contract Or Prospective Contractual Relation*.

751. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Eight, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT NINE
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 871

752. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-751, inclusive, as though fully set forth herein.

752. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlement as set forth in Restatement (Second) of Torts § 871, *Intentional*

¹³⁸ One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of

(a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
(b) preventing the other from acquiring or continuing the prospective relation. REST 2d §766B.

Harm To A Property Interest. A right to continue employment constitutes a property right.

753. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Nine, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT TEN
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 46

754. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-753, inclusive, as though fully set forth herein.

755. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlement as set forth in Restatement (Second) of Torts § 46, *Outrageous Conduct Causing Severe Emotional Distress*.

756. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Ten, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and

4. Attorney's fees and costs according to proof.

COUNT ELEVEN
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 874A

757. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-756, inclusive, as though fully set forth herein.

758. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlement as set forth in Restatement (Second) of Torts § 874A, *Tort Liability for Violation of Legislative Provision*.

759. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Eleven, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT TWELVE
VIOLATION OF FIDUCIARY DUTY

760. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-759, inclusive, as though fully set forth herein.

761. The 1962(b) Perpetrators (as defined in paragraph 724 hereof), 1962(c) Defendants (as defined in paragraph 728 hereof) and RTFC did intentionally transgress each Plaintiff's legal entitlement as set forth in Restatement (Second) of Torts, § 874, Violation of Fiduciary Duty, by using RTFC's status as ICC's primary creditor to quash a members'

legitimate inquiries into the allocation of patronage income (income owned by said members) by instigating the June 2004 Foreclosure action and instigation of retaliatory and extortionary activities against the Plaintiffs.

762. By reason thereof, each of the said Defendants shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Twelve, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

**COUNT TWELVE
COMMON LAW CIVIL CONSPIRACY**

763. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-762, inclusive, as though fully set forth herein.

764. Each of the Defendants did intentionally engage in a common law conspiracy for an unlawful objective and in furtherance thereof did commit numerous torts and did violate numerous statutes of the Virgin Islands, the U.S. Government, the State of South Dakota, and the District of Columbia.

765. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for compensatory and punitive damages.

WHEREFORE, with respect to Count Twelve, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;

2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

PLAINTIFFS REQUEST A JURY TRIAL.

Dated: November __, 2009.

By: **LAW OFFICES OF
LAWRENCE H. SCHOENBACH**

/s/ Lawrence H. Schoenbach, Esq.

DRAFT

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- and -

By: **THE LAW OFFICE OF NORMAN A. ABOOD**

/s/ Norman A. Abood

Norman A. Abood (OH. Sup. Ct. #0029004)
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Admitted *Pro Hac Vice*

Attorneys for Jeffrey Prosser

DRAFT

Dated: November __, 2009.

By: JEFFREY B. C. MOORHEAD, P.C.

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Attorneys for Dawn Prosser

Dated: November __, 2009.

John P. Raynor, Pro Se, Plaintiff

By: _____
John P. Raynor, Pro se
10110 Nicholas Street, Suite 102
Omaha, Nebraska 68114
PH: (402) 498-4400
FX: (402) 498-0339
jraynor@rrplawyers.com

Dated: November __, 2009.

Adrian Prosser, Pro Se, Plaintiff

By: _____
Adrian Prosser, Pro se
308 North Bromeliad
West Palm Beach, Fl 33401
PH: 561.818.9814
FX: 561.828.6290 efax
adrian.prosser@gmail.com

Prosser Letter 11-05-2009 to PSC re Change of Control

Exhibit G

**Prosser's Verified Complaint Against David M. Nissman
Filed 10-29-2009**

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

JEFFREY J. PROSSER
Plaintiff,

v.

DAVID MARSHALL NISSMAN
Defendant.

) **CASE NO.**

)

) **ACTION FOR DAMAGES,**

09 OCT 29 12:29

) **JURY TRIAL DEMANDED**

) **SUPERIOR COURT**

) **REQUEST FOR PUNITIVE**

) **DAMAGES**

VERIFIED COMPLAINT

COMES NOW Plaintiff, Jeffrey J. Prosser ("Prosser"), by and through counsel, Jeffrey B. C. Moorhead, and in support of his Verified Complaint against Defendant respectfully submits as follows:

JURISDICTION

1. This Court has jurisdiction of the above matter pursuant to 4 V.I.C. 76(a) as amended.

PARTIES

2. Plaintiff is, and at all times material herein has been, an adult resident of St. Croix Virgin Islands.

3. Defendant is, and at all times material herein has been, an adult resident of St. Croix, Virgin Islands.

4. From approximately December 1997 until October 7, 2007, Plaintiff was the ultimate owner and manager of the Virgin Islands Telephone Company

("Vitelco"), a wholly-owned subsidiary of Innovative Communication Corporation.

5. Vitelco is the local telephone provider in the Virgin Islands. As such, it is regulated by the Virgin Islands Public Services Commission ("PSC").

6. On July August 21, 2008, the PSC Commissioned and opened Docket No. 578 to investigate the rates for local telephone services charged by Vitelco.

7. On November 5, 2008, the PSC appointed Defendant to be the Hearing Examiner in Docket No. 578.

8. Defendant is a former United States Attorney for the Virgin Islands.

9. The PSC appointed Defendant to be the Hearing Examiner in Docket No. 578 despite the fact that Defendant had no prior telecom experience and was attorney of record in an open case against the PSC, wherein he represented the St. Thomas Source in its efforts to obtain Vitelco's confidential financial documents.

10. On November 5, 6, and 7, 2008, Defendant held public hearings on Docket No. 578.

11. On December 8, 2008, Defendant presented his findings to the PSC and published his Report. Defendant's Report is dated December 1, 2008.

12. The PSC later voted to accept the recommendations made by Defendant in his report dated December 1, 2008.

13. Defendant's Report was completed in 36 days.
14. Upon information and belief, once he was appointed as Hearing Examiner by the PSC, Defendant had access to all of Vitelco's records, previous audits and financial statements that were in the possession of the PSC.
15. Vitelco has two pension plans for its employees: Innovative Communication Corporation Consolidated Pension Plan (Management Plan) and Virgin Islands Pension Plan for Hourly Employees (Union Plan).
16. Plaintiff has never been on the Board of Trustees for any of the pension plans.
17. The pension plans are audited each year by Fuhrman, Smolsky & Furey.
18. Vitelco's pension plans continue to be audited by Fuhrman, Smolsky & Furey.
19. All of Vitelco's audit opinions are unqualified and done in accordance with GAAP (Generally Accepted Accounting Principles).
20. Fuhrman, Smolsky & Furey has never reported any misuse of pension funds by anyone.

21. Upon information and belief, Defendant failed to contact or interview anyone from Fuhrman Smolsky & Furey (auditors of the pension plans) to determine if any pension funds had been misused by Plaintiff.

22. In his Report, Defendant made critical, disparaging and false statements about Plaintiff that were not supported by the long-term historical record of Plaintiff, the PSC, Vitelco and its "past management."

23. In footnote 16 at page 17 of his Report, Defendant states:

"it is inconceivable that the misappropriation of the \$20 million from the employees' pension fund, allegedly by prior management, will not be subject of a separate criminal investigation and the Hearing Examiner recommends that VITELCO, the PSC, and the Trustee coordinate their efforts to cooperate with any such investigations that may be under way. On this point and many others where misappropriation and illegal diversion of assets is being claimed, there can be complicated issues concerning restitution. The criminal justice system works better when the victims can agree and present coordinated positions on restitution so that a Federal or Superior court judge will not have to listen to weeks of conflicted testimony followed by endless appeals on who is entitled to any proceeds recovered in any successful criminal case."

24. It is well known to the public and the PSC that by Defendant's reference to "prior management" Defendant was referring to, and intended the PSC and the public to believe he was referring to, Jeffrey J. Prosser, the Plaintiff herein.

25. At the time Defendant published his Report he knew and/or reasonably expected that it would be published in the public media.

26. Defendants report, including, but not limited to, the disparaging remarks concerning Plaintiff (prior management) herein has, in fact, been published in the public media.

27. Defendant's statement in his Report that the misappropriation of \$20 million from the employees' pension fund, allegedly by Plaintiff (prior management) is completely false.

28. Defendant's statement in his Report that the misappropriation of \$20 million from the employees' pension fund, allegedly by Plaintiff (prior management) is not supported by any fact.

29. Defendant's statement in his Report that the misappropriation of \$20 million from the employees' pension fund, allegedly by Plaintiff (prior management) is not supported by an document or analysis from Fuhrman Smolsky & Furey, the auditors of the pension funds.

30. Nowhere in the text of Defendant's Report is there any evidence proffered or cited in support of Defendant's false and malicious statements about Plaintiff's misappropriation of pension funds.

31. Plaintiff has never misappropriated any funds.

32. Defendant's statement about misappropriation of funds from Vitelco's pension funds by Plaintiff is a knowingly and patently false statement made by Defendant.

33. Defendant's statements about misappropriation of funds from Vitelco's pension funds by Plaintiff were made by Defendant with the express belief and/or understanding that his statements would cause injury to Plaintiff.

34. Nowhere in any of the annual audits by Fuhrman Smolsky & Furey, for the time periods in which Plaintiff was involved in Vitelco's management has there been reported, disclosed, identified, or otherwise indicated or suggested that funds were taken or misappropriated from the pension funds by Plaintiff or anyone else.

35. At page 62 of his Report, Defendant states:

"Having said that, the misappropriation of funds should be addressed in other investigations that may be ongoing."

36. At page 62 of his Report, Defendant further states:

"During the course of the hearing VITELCO offered evidence that strongly suggested that former management inappropriately diverted VITELCO's liquid assets to a variety of sources and other locations. Based on the testimony it is extremely likely that criminal investigations are either underway or will follow the public hearing of some pretty serious criminal acts. Based on the testimony we have little difficulty finding from this record that the

actions and conduct of the prior management (and ownership) of VITELCO clearly demonstrate violations of their respective fiduciary duties and obligations to VITELCO the company. As a result, significant funds have been misused or are unable to be adequately or accurately accounted."

37. It is well known to the public and the PSC that by Defendant's reference to "prior management" Defendant was referring to, and intended the PSC and the public to believe he was referring to, Jeffrey J. Prosser, Plaintiff herein.

38. Defendant's statements regarding prior management's (Plaintiff's) improprieties go beyond mere allegations and were made as conclusive statements of fact which were patently false and were designed to injure Plaintiff.

39. There is no evidence in Defendant's Report or in the record which support Defendant's statements that Plaintiff stole \$20 Million from any pension fund.

40. All of the statements made by Defendant herein were made with actual malice and/or with the knowledge that the statement was false.

41. Plaintiff is not and has never been a public figure.

42. Defendant's statements are false and defamatory and were made against Plaintiff.

43. Defendant's statements were made with reckless disregard for the truth and with reckless disregard for the facts as set forth in existing PSC records and the audit opinions of Fuhrman Smolsky & Furey that were at Defendant's disposal.

44. By publishing his Report, Defendant gave publicity to a matter concerning Plaintiff that placed Plaintiff before the public in a false light.

45. The false light which Defendant placed Plaintiff on or about December 1, 2009 would be highly offensive to a reasonable person.

46. At all times mentioned herein, Defendant had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which Plaintiff was placed.

47. Defendant's statements were made with the actual intent to injure Plaintiff.

48. Defendant knew at the time he made the statements referenced herein above that such statements would cause injury to Plaintiff.

49. Defendant's statements were calculated to cause Plaintiff injury.

50. Defendant's allegations against Plaintiff that he stole \$20 million of Vitelco's pension funds is such a major misrepresentation of Plaintiff's character, history, activities and/or beliefs that serious offense may reasonably be expected to

be taken by a reasonable man in his position. Restatement (Second) of Torts § 652E.

51. None of Defendant's statements made in his Report of December 1, 2008 were privileged.

52. If any of Defendant's statements were privileged, (Plaintiff does not concede that they were) Defendant improperly exercised the privilege and the abuse of it defeated the protection otherwise afforded.

53. If Defendant enjoyed any privilege, (Plaintiff does not concede that he did) the privilege was abused and waived because of Defendant's knowledge or reckless disregard as to the falsity of the Report. Restatement (Second) of Torts § 600-602.

54. Defendant's statements regarding "prior management" have been understood by the PSC to be references to Plaintiff.

55. Defendant's statements regarding "prior management" have been understood by the public to be references to Plaintiff

56. Defendant's statements regarding "prior management" have been used against Plaintiff to disparage Plaintiff's character and credibility in ongoing legal proceedings.

COUNT I ("Defamation of Character")

57. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56 above and incorporates the same as if fully set forth herein.

58. Defendant's false statements, as detailed herein above, constitute defamation per se.

59. As a result of the per se defamation, Plaintiff has suffered damages.

COUNT II ("Libel")

60. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 59 above and incorporates the same as if fully set forth herein.

61. Defendant committed libel against Plaintiff in December of 2008 when he published his report at the PSC meeting.

62. As a proximate result, Plaintiff has incurred damages, including, but not limited to, mental anguish, public humiliation, embarrassment, pain, suffering, financial losses and the loss of enjoyment of life all of which are likely to continue in to the foreseeable future.

COUNT III (Intentional Infliction of Emotional Distress)

63. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 62 above and incorporates the same as if fully set forth herein.

64. Defendant's statements regarding Plaintiff were outrageous.

65. Defendant has intentionally inflicted emotional distress on Plaintiff.

66. As a result, Plaintiff has suffered damages as outlined herein.

COUNT IV ("Invasion of Privacy")

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 66 above and incorporates the same as if fully set forth herein.

68. Defendant has invaded Plaintiff's privacy.

COUNT V ("Slander")

69. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 68 above and incorporates the same as if fully set forth herein.

70. Defendant has committed slander against Plaintiff.

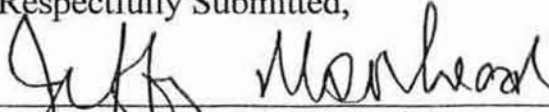
71. The actions of Defendant are so reprehensible, and/or done with such evil motive and/or with such a reckless disregard for the rights of Plaintiff that Plaintiff is entitled to an award of punitive damages, attorney fees and costs of suit.

WHEREFORE, Plaintiff prays for damages as they may appear, pre and post judgment interest, punitive damages, costs and attorney fees and such other relief as this Court deems fair and just.

Plaintiff request trial by jury on all issues.

DATED: October 29, 2009

Respectfully Submitted,



JEFFREY B. C. MOORHEAD

Attorney for Plaintiff

CRT Brow Building

1132 King Street, Suite #3

Christiansted, St. Croix

U.S. Virgin Islands 00820-5076

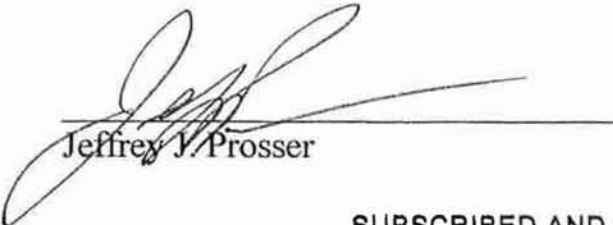
U.S. Virgin Islands Bar Registration #438

TEL: (340) 773-2539 FAX: (340) 773-8659

EMAIL: jeffreymlaw@yahoo.com

VERIFICATION

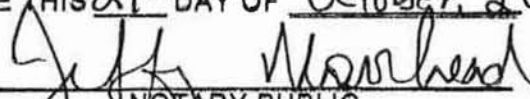
I, Jeffrey J. Prosser hereby verify that I have read the foregoing Verified Complaint and that it is true and accurate.



Jeffrey J. Prosser

October 29, 2009

SUBSCRIBED AND SWORN TO BEFORE
ME THIS 29th DAY OF October, 2009



NOTARY PUBLIC
JEFFREY B.C. MOORHEAD
Commission Exp. 07/26/2013
LNP - 021-09

Prosser Letter 11-05-2009 to PSC re Change of Control

Exhibit H

VI Daily News Article 03-05-2004 re Vitelco \$100 Million Upgrades

The Virgin Islands Daily News

A Pulitzer Prize-winning newspaper

St. Thomas

St. Croix

St. John

Tortola, BVI

[Full Story](#)

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Innovative Telephone Co. is planning \$100 million in infrastructure upgrades

By TIM FIELDS

Friday, March 5th 2004

ST. THOMAS - Innovative Telephone Co. announced Thursday it will spend \$100 million during the next five years to improve telecommunications in the territory.

Jeffrey Prosser, president and chief executive officer of Innovative Communication Corp., which wholly owns Innovative Telephone, said ICC wants the telephone company to have "state-of-the-art technology and infrastructure to better serve our business and residential customers.

"This means protecting the system against the ravages of Mother Nature, having dual route network connectivity that provides maximum redundancy both on-island and off-island, expanding and enhancing support systems for improved customer service, and expanding and upgrading outside plant facilities - shorter loops, more fiber, more underground construction - to increase performance, reliability and the ubiquitous deployment of broadband services," Prosser said.

"Our investment will make the U.S. Virgin Islands even more attractive for businesses dependent on telecommunications to relocate to St. Croix, St. John and St. Thomas," he said.

David Sharp, president and chief executive officer of Innovative Telephone, said Thursday, "Telecommunication is critical to any business and is critical after any disaster - it is also imperative to the Virgin Islands economy."

Innovative Telephone's five-year plan includes laying fiber optic cables, installing more lines underground and upgrading the network to offer more customers access to services, such as DSL lines.

Part of the plan includes a contract signed last week between Innovative and St. Croix-based Bonneville Construction to lay new cable on North Shore Road on St. John.

"The cable there has been there for awhile and it is in bad shape," Sharp said.

The new lines will improve service in that area and will give us capacity for growth, he said.

Two other projects the company hopes to complete this year are: installing new digital microwave equipment transmitting between St. Thomas and St. John and laying an underwater fiber optic cable between St. Thomas and St. Croix.

Currently, all intra-island telecommunications are done via digital microwave transmission.

Sharp said fiber optic lines connecting the islands will serve as backup systems ensuring that the territory has communications during a disaster or other emergency.

Last week, the Water and Power Authority's governing board approved a proposal to lease ICC six fiber optic cables running between St. Thomas and St. John at \$35,910 per year for 10 years. Those cables will serve as a backup between the two islands.

Innovative Telephone also plans to expand and upgrade outside plant facilities to reduce the time it takes for data to travel through the lines and create redundancies in the system, giving data alternate routes in case a main line is damaged.

Other projects include expanding and enhancing support systems for customer service.

"This will be a tremendous amount of work," Sharp said. "We are priming the pump to provide what people need and we want to build it better."

ICC, headquartered on St. Croix, is the parent company of a number of companies in the U.S. and British Virgin Islands, St. Maarten, Guadeloupe, Martinique and France. Its media holdings in the territory include TV2 and The Virgin Islands Daily News.

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